

No. 11028

2412

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CHESTER BOWLES, Administrator of the Office  
of Price Administration,

Appellant,

VS.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon Corporation,  
and C. W. NORTON, President,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

1945

PAUL P. O'BRIEN.  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States  
in the District of Oregon

Civil 2565

CHESTER BOWLES, Administrator of the Office  
of Price Administration,

Applicant,

vs.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon Corporation,  
and C. W. NORTON, President,

Respondent.

### ORDER TO SHOW CAUSE

It appearing from the application filed herein and the annexed affidavit of D. E. Rodeback that the respondents, after request made upon them for permission to inspect and copy certain specified records, and after the service upon them of an inspection requirement issued and signed by the Administrator for the Office of Price Administration, have refused and do still refuse to permit the inspection and copying of said specified records, and the Court being fully advised in the premises, it is hereby

Ordered that the respondents and each of them appear and show cause on the 2nd day of October, 1944, at the hour of 10:00 o'clock A.M. before the undersigned Judge of the United States District Court for the District of Oregon, why an order should not be made requiring respondents and each



of them to permit duly authorized representatives of the Office of Price Administration to inspect and to copy the following records: All purchase and sales records and disbursement records covering the sale and purchase by the Northwest Poultry and Dairy Products Company of all turkeys from May 8, 1944, to and including August 10, 1944.

Dated at Portland, Oregon, this 19th day of September, 1944.

(Signed) CLAUDE McCULLOCH

United States District Judge

[Endorsed]: Filed Sept. 19, 1944. [1\*]

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[Title of District Court and Cause.]

### RETURN TO ORDER TO SHOW CAUSE

Come Now the respondents, Northwest Poultry and Dairy Products Company, an Oregon corporation, and C. W. Norton, President, and submit the following return to the order herein requiring them to show cause before Honorable Claude McCulloch, Judge of the United States District Court, for the District of Oregon, why an order should not be made requiring them, and each of them, to permit the duly authorized representatives of the Office of Price Administration to inspect and copy all records of purchase and sales and disbursements covering the sale and purchase by the respondent cor-

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

poration of all turkeys from May 8, 1944, to and including August 10, 1944.

### I.

The respondents admit paragraphs I, II and III of the application herein.

### II.

As to paragraph IV thereof, the respondents admit that an oral request was made by certain employees of the Office of Price Administration on or about the 1st day of August, 1944, for permission to inspect and copy the respondents' records of the purchase, sales and disbursements above mentioned and that such [2] records were under the control of the respondents at that time. But the respondents deny that they, or either of them, refused to permit such inspection, and allege that they asked for time to consult their attorneys in Washington, D. C. and their local attorneys as to whether or not they were legally compellable to comply with said request, the same being based, as the respondents understood and believed, and still understand and believe, on order G-93 (F. R. 9-5287), which the respondents believed, and still believe, to be void, for the reasons specified *infra*. As to the other allegations in said paragraph the respondents deny that they have any knowledge or information sufficient to form a belief regarding the same.

### III.

By way of a return to paragraph V of the application, the respondents admit the allegations there-

of, except the one relating to the alleged refusal of the respondents to permit the inspection in question, and as to that they reallege the explanation relating thereto set forth supra as to paragraph IV.

#### IV.

By way of a return to paragraph VI of the application, the respondents admit that the records in question are in their possession, but they deny the other allegations in said paragraph.

And as and for a further return to said order the respondents allege and show to the court the following facts:

##### I.

For the period of about eleven years last past, the respondent corporation has been engaged, at Portland, Oregon, in the business of wholesaler, processor and purchaser of turkeys, and the respondent, C. W. Norton, has been the manager of said [3] corporation in that business. During that period the growing, processing and marketing of turkeys in the States of Oregon and Washington has been, and it still is, one of the major industries of those states.

##### II.

During all of said period it has been the custom of the wholesalers, processors and purchasers of turkeys in those states to haul and pick turkeys for the growers on a per head basis, provided that they subsequently purchased the dressed turkeys; and during the latter part of that period the charge made by them for picking hens was 20c per head

and for picking toms 22c per head, plus 3c per head for hauling, making a total charge for picking and hauling of 23c for hens and 25c for toms.

### III.

During the year 1943 a majority of said wholesalers, processors and purchasers of turkeys advanced this service charge to 25c per head on hens and 28c per head on toms. The Office of Price Administration charged that this was a violation of the Emergency Price Control Act of 1942 and amendments thereof and ruled that said service charge be reduced to the former figures of 23c on hens and 25c on toms.

### IV.

In the month of November, 1943, the Office of Price Administration issued a ruling to the effect that the processor wholesaler was prohibited from purchasing dressed turkeys from the growers, although this had been the uniform custom in the above mentioned states for many years theretofore; in other words, that he could not pay the ceiling price fixed by the Office of Price Administration on dressed turkeys and charge the growers for the service of picking and hauling them, which ruling ignored and [4] disrupted the customary practice in said states which had obtained for the above mentioned period.

### V.

Later in the month of November, 1943, the above ruling was changed to the effect that processors who

had dressed turkeys for farmers might continue to buy the turkeys on a dressed basis providing they did not exceed the ceiling of dressed turkeys. This ruling somewhat clarified the confusion brought about by the above mentioned regulations and the respondents and others in the same business believed that they would be able to carry on the business of handling turkeys in the customary manner and they continued to conform their business practices to said rulings in accordance with their best understanding.

## VI.

On the 2nd day of May, 1944, said order G-93 (F. R. 9-5287) was issued by the Regional Administrator of the Office of Price Administration, at San Francisco, by the terms of which the maximum price for the service of custom processing all live turkeys in Region VIII (the States of California, Washington, Nevada, Oregon, except Malheur County and certain portions of the State of Arizona and certain portions of the State of Idaho) was adjusted as follows:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

Certain definitions were included in said order, among them one to the effect that the service of custom processing of turkeys "loose" meant the assembling, killing, bleeding, plucking, [5] chilling, grading and head wrapping. A copy of said order



is hereto annexed marked Exhibit "A" and hereby made a part of this return.

## VII.

Simultaneously with the issuance of the last mentioned order the Office of Price Administration, through its officers and employees in Portland, Oregon, issued an order, effective May 8, 1944, wherein the above mentioned portions of Order G-93 were repeated and certain interpretations added to the effect, among others, that the kill and haul charge might not be applied in addition to the loose or boxed charge; and that the above mentioned prices for said service were the only prices which might be charged therefor, that any charge of less than said prices would be considered an attempt to evade said price regulations and that any charge of more than those prices would be a violation of said order. A copy of the last mentioned order is hereto attached marked Exhibit "B" and hereby made part of this return. Said order applied only to the States of Washington and Oregon, except Malheur County in the latter state.

## VIII.

In their said business the respondents, as wholesalers, processors and dealers, handle "loose" and "boxed" turkeys. The average weight of turkeys so handled by them is such that under the terms of said orders the service charge would amount to approximately 52½¢ per head for hens and 72¢ per head for toms. Such a charge is excessive, the

growers will not submit thereto and as a consequence the respondents' said business will be ruined if they are compelled to submit to the said regulations. [6]

## IX.

Said orders and regulations are unlawful and void for the following reasons:

(a) The same are not authorized by the Emergency Price Control Act of 1942, or any amendments thereof, or by any other law. They are not maximum price regulations, but, on the contrary, are an attempt to fix arbitrary and inflexible prices for the service of processing "loose" or "boxed" turkeys.

(b) Said orders and regulations are discriminatory and unfair in that they do not purport to be of general application, restricted as they are to the State of Washington and the State of Oregon, except Malheur County; and do not purport to apply to all persons or corporations engaged in said business within that area, such as co-operatives, which are permitted to rebate to the growers of turkeys any overcharge resulting from compliance with such service regulations, while wholesalers, processors and dealers, such as the respondents, are prohibited from so doing. They are unfair and unjust and their enforcement would result in the denial to the respondents of the equal protection of the laws and would deprive them of their property without due process of law and without just compensation.

(c) Said orders and regulations are unlawful and void for the further reason that thereby an attempt is made to compel a change in the business practices, cost practices and methods established in the said industry in said locality and followed by the respondents and others for a long period of time before the enactment of the Emergency Price Control Act.

### X.

By way of a further return to said order to show cause the respondents allege and show to the court that the said [7] respondent corporation has filed in said court, and there is now pending a suit in which said corporation, as plaintiff, prays for a declaratory judgment regarding the validity of said orders and regulations against the defendants therein, Chester Bowles, Administrator of the Office of Price Administration, Cecelia P. Gallagher and Franz Wagner, officers and employees of said office at Portland, Oregon, all of whom are charged with the enforcement of said orders and regulations.

Wherefore, the respondents pray that said application be dismissed and that they be relieved from compliance with the demands therein made and in said order to show cause, and that they have their costs and disbursements herein.

(Signed) B. G. SKULASON

(Signed) WILBER HENDERSON

Attorneys for Respondents.

[Endorsed]: Filed Oct. 2, 1944. [8]



## EXHIBIT "A"

Office of Price Administration  
San Francisco Regional Office  
Region VIII

Order No. G-93 Under Section 1499.18(c), as Amended, of the General Maximum Price Regulation.

## CUSTOM DRESSING OF TURKEYS

For the reasons set forth in an opinion issued simultaneously herewith and under the authority vested in the Regional Administrator of the Office of Price Administration by Section 1499.18(c) of the General Maximum Price Regulation, it is hereby ordered:

(a) The adjusted maximum price for the service of custom processing of live turkeys in Region VIII shall be as follows:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

(b) Definitions:

(1) The service of custom processing of turkeys "boxed" means the service of assembling, killing, bleeding, plucking, chilling, grading, head wrapping, and boxing.

(2) The service of custom processing of turkeys "loose" shall be as defined in (1) above except boxing.

(3) The service of custom processing of turkeys "kill and haul" shall be as defined in (1) above except chilling, grading and boxing.

(4) "Region VIII" means the States of California, Washington, Nevada, Oregon, except Malheur County, and Arizona, except those portions of Coconino County and Mohave County lying north of the Colorado River, and the following Counties in the State of Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.

(c) This order may be revoked, amended or corrected at any time,

(1) This order shall become effective May 2, 1944.

(56 Stat. 23,765; Pub. Law 151, 78th Cong.; E. O. 9250, 7 F. R. 7871 and E. O. 9328, 8 F. R. 4681)

Issued this 2nd day of May, 1944.

(s) L. F. GENTNER

Regional Administrator [9]

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## EXHIBIT "B"

Office of Price Administration  
Bedell Building  
Portland 4, Oregon

### CUSTOM DRESSING OF TURKEYS

By Regional Order No. G-93 under Section 1499.18(c) of the General Maximum Price Regulation, the maximum prices for the service of custom

processing of live turkeys in Region VIII have been adjusted as follows:

(a) Ceilings:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

(b) Definitions:

(1) The service of custom processing of turkeys "boxed" means the service of assembling, killing, bleeding, plucking, chilling, grading, head wrapping, and boxing.

(2) The service of custom processing of turkeys "loose" shall be as defined in (1) above except boxing.

(3) The service of custom processing of turkeys "kill and haul" means assembling, killing, bleeding and plucking. (This charge should be applied by dealers who do not have the proper facilities for chilling, grading, head wrapping and boxing.)

(4) "Region VIII" means the States of Washington and Oregon except Malheur County.

(c) Interpretation:

(1) The charges set forth in paragraph (a) are to be based on dressed weight. They are not cumulative, i.e. the kill and haul charge may not be applied in addition to the loose or boxed charge. It is not necessary for a processor to subtract anything from his charge if the grower performs the hauling service, i.e. the full kill and haul reduction may be taken.

(2) The above prices are the only prices which may be charged for processing services. Any charge of less than the prices fixed in this Order will be considered an attempt to evade Revised Maximum Price Regulation 269. Charges of more than those prices would be in outright violation of this Order.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 2nd day of Oct., 1944.

/s/ CECELIA P. GALLAGHER

Attorney for Applicant [10]

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[Title of District Court and Cause.]

### ANSWER

Come Now the respondents and for their answer to the application herein for an order requiring the respondents to permit inspection and copying of records therein mentioned allege:

#### I.

The respondents admit paragraphs I, II, and III of the application.

#### II.

As to paragraph IV thereof, the respondents admit that an oral request was made by certain employees of the Office of Price Administration on or about the 1st day of August 1944, for permission to inspect and copy the respondents' records of the

purchase, sales and disbursements above mentioned and that such records were under the control of the respondents at that time. But the respondents deny that they, or either of them, refused to permit such inspection, and allege that they asked for time to consult their attorneys in Washington, D. C. and their local attorney as to whether or not they were legally compellable to comply with said request, the same being based, as the respondents understood and believed, and still understand and believe, on order G-93 (F. R. 9-5287), which the respondents believed, and still [11] believe, to be void, for the reasons specified *infra*. As to the other allegations in said paragraph the respondents deny that they have any knowledge or information sufficient to form a belief regarding the same.

### III.

The respondents admit the allegations of paragraph V of the application, except the one relating to the alleged refusal of the respondents to permit the inspection in question, and as to that they reallege the explanation relating thereto set forth *supra* as to paragraph IV.

### IV.

The respondents admit that the records in question are in their possession, but they deny the other allegations of paragraph IV.

And as and for a further and separate answer and defense to said application the respondents allege and show to the court the following facts:

## I.

For the period of about twelve years last past, the respondent corporation has been engaged, at Portland, Oregon, in the business of wholesaler, processor and purchaser of turkeys, and the respondent, C. W. Norton, has been the manager of said corporation in that business. During that period the growing, processing and marketing of turkeys in the States of Oregon and Washington has been, and it still is, one of the major industries of those states. The respondent corporation handles upwards of one-third of said business in the State of Oregon, and for some time past has been selling to the government almost its entire quantity of turkeys processed by it. [12]

## II.

During all of said period it has been the custom of the wholesalers, processors and purchasers of turkeys in those states to haul and pick turkeys for the growers on a per head basis, provided that they subsequently purchased the dressed turkeys; and during the latter part of that period the charge made by them for picking hens was 20c per head and for picking toms 22c per head, plus 3c per head for hauling, making a total charge for picking and hauling of 23c for hens and 25c for toms.

## III.

During the year 1943 a majority of said wholesalers, processors and purchasers of turkeys advanced this service charge to 25c per head on hens and 28c per head on toms. The Office of Price



Administration charged that this was a violation of the Emergency Price Control Act of 1942 and amendments thereof and ruled that said service charge be reduced to the former figures of 23c on hens and 25c on toms.

#### IV.

In the month of November, 1943, the Office of Price Administration issued a ruling to the effect that the processor-wholesaler was prohibited from purchasing dressed turkeys from the growers, although this had been the uniform custom in the above mentioned states for many years theretofore; in other words, that he could not pay the ceiling price fixed by the Office of Price Administration on dressed turkeys and charge the growers for the service of picking and hauling them, which ruling ignored and disrupted the customary practice in said states which had obtained for the above mentioned period.

#### V.

Later in the month of November, 1943, the above ruling was changed to the effect that processors who had dressed [13] turkeys for farmers might continue to buy the turkeys on a dressed basis, provided they did not exceed the ceiling price of dressed turkeys. This ruling somewhat clarified the confusion brought about by the above mentioned regulations and the respondents and others in the same business believed that they would be able to carry on the business of handling turkeys in the customary manner and they continued to conform

their business practices to said rulings in accordance with their best understanding.

## VI.

On the 2nd day of May, 1944, said order G-93 (F. R. 9-5287) was issued by the Regional Administrator of the Office of Price Administration, at San Francisco, by the terms of which the maximum price for the service of custom processing all live turkeys in Region VIII (the States of California, Washington, Nevada, Oregon, except Malheur County and certain portions of the State of Arizona and certain portions of the State of Idaho) was adjusted as follows:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

Certain definitions were included in said order, among them one to the effect that the service of custom processing of turkeys "loose" meant the assembling, killing, bleeding, plucking, chilling, grading and head wrapping. A copy of said order is hereto annexed marked Exhibit "A" and hereby made part of this return.

## VII.

Simultaneously with the issuance of the last mentioned order the Office of Price Administration, through its officers and employees in Portland, Oregon, issued an order, [14] effective May 8, 1944,



wherein the above mentioned portions of order G-93 were repeated and certain interpretations added to the effect, among others, that the kill and haul charge might not be applied in addition to the loose or boxed charge; and that the above mentioned prices for said service were the only prices which might be charged therefor, that any charge of less than said prices would be considered an attempt to evade said price regulations and that any charges of more than those prices would be a violation of said order. A copy of the last mentioned order is hereto attached marked Exhibit "B" and hereby made part of this return. Said order applied only to the States of Washington and Oregon, except Malheur County in the latter state.

### VIII.

In their said business the respondents, as wholesalers, processors and dealers handle "loose" and "boxed" turkeys. The average weight of turkeys so handled by them is such that under the terms of said orders the service charge would amount to approximately 52½¢ per head for hens and 72¢ per head for toms. Such a charge is excessive, the growers will not submit thereto and, as a consequence, the respondents' said business will be ruined if they are compelled to submit to the said regulations.

### IX.

The respondents have filed in said court, and there is now pending, a suit No. Civ. 2575 in which said corporation, as plaintiff, prays for a declara-

tory judgment regarding the validity of said orders and regulations against the defendants therein, Chester Bowles, Administrator of the Office of Price Administration, Cecelia P. Gallagher and Franz Wagner, officers and employees of said office at Portland, Oregon, all of whom are charged with the enforcement of said orders and regulations. [15]

#### X.

On October 2, 1944, there was issued from the Office of Price Administration at Washington a regulation to the effect that persons in the position of the respondents as regards the handling of poultry, might act as agents for the growers of poultry in sales thereof to the government and might divide with the growers, subject to certain restrictions, the premiums on such sales.

#### XI.

The respondent corporation at once entered into contracts with its growers and complied with said order G-93 as thus in effect modified and continues to comply therewith.

#### XII.

Previous thereto the respondents had not complied with said order G-93 for the reason that they could not do so without jeopardizing their said business.

#### XIII.

As a result of said modification of order G-93 no reason remains for the application herein for the examination of the books, records and accounts of the respondents, unless the applicant is seeking evi-

dence to be used as a basis for a complaint in an action for damages against the respondents for an alleged violation of the Emergency Price Control Act and regulations thereunder or as a basis for a criminal prosecution of the respondents for such alleged violations.

XIV.

The respondents are possessed of large means and are amply able to respond in damages should any be assessed against them in a suit or action in any court.

XV.

The respondents are citizens of the United States.

[16]

XVI.

Said orders and regulations, Exhibits "A" and "B" are unlawful and void for the following reasons:

(a) Their enforcement would cause a radical change in the business practices, cost practices and methods established in said industry in said locality and followed by the respondents and others in that business for a long period of time before the enactment of the Emergency Price Control Act.

(b) Said orders are not authorized by the Emergency Price Control Act, or by any amendments thereof, or by any other law. They are not maximum price regulations, but, on the contrary, an attempt is thereby made to fix arbitrary and inflexible prices for the processing services therein mentioned.

(c) Said orders and regulations are unfair and

discriminatory in that they do not purport to be of general application, restricted as they are to the State of Washington and the State of Oregon, except Malheur County; and do not purport to apply to all persons or corporations engaged in said business within that area, such as co-operatives, which are permitted to rebate to their members, growers of turkeys, any overcharge resulting from compliance with such processing regulations, while independent wholesalers, processors and dealers, such as the respondents, are prohibited from so doing by the express language of exhibit "B". Said orders are unjust and unlawful and their enforcement would inevitably result in the denial of the respondents of the equal protection of the laws and would deprive them of their property without due process of law and without just compensation. By the issuance of said orders an attempt is made to deprive the respondents of the protection against self-incrimination. The respondents hereby invoke and rely upon all their Constitutional rights, [17] privileges and immunities applicable to the issues involved in this proceeding.

Wherefore, the respondents pray that said application be dismissed, that said orders be declared unlawful and void and that the respondents be discharged from further compliance with the order to show cause herein, and that they have their costs and disbursements.

/s/ B. G. SKULASON

/s/ WILBER HENDERSON

[Endorsed]: Filed Oct. 27, 1944. [18]

## EXHIBIT "A"

Office of Price Administration  
San Francisco Regional Office  
Region VIII

Order No. G-93, Under Section 1499.18(c), as Amended, of the General Maximum Price Regulation.

## CUSTOM DRESSING OF TURKEYS

For the reasons set forth in an opinion issued simultaneously herewith and under the authority vested in the Regional Administrator of the Office of Price Administration by Section 1499.18(c) of the General Maximum Price Regulation, it is hereby ordered:

(a) The adjusted maximum price for the service of custom processing of live turkeys in Region VIII shall be as follows:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

(b) Definitions:

(1) The service of custom processing of turkeys "boxed" means the service of assembling, killing, bleeding, plucking, chilling, grading, head wrapping, and boxing.

(2) The service of custom processing of turkeys "loose" shall be as defined in (1) above except boxing.



(1) The service of custom dressing of turkeys "kill and haul" shall be as defined in (2) above except chilling, grading and boxing.

(2) "Region VIII" means the States of California, Washington, Nevada, Oregon, except Malheur County, and Arizona, except those portions of Coconino County and Mohave County lying north of the Colorado River, and the following Counties in the State of Idaho: Blaine, Bonner, Boundary, Clearwater, Idaho, Latah, Lemhi, Lewis, Nez Perce and Shoshone.

(3) This order may be revoked, amended or corrected at any time.

(4) This order shall become effective May 1, 1944.

(56 Stat. 12,765; Pub. Law 331, 75th Cong.; E. O. 9250, 1 F. R. 1371 and E. O. 9322, 3 F. R. 4321)

Issued this 2nd day of May, 1944.

W. L. F. GENTWEE,

Regional Administrator. [15]

#### EXHIBIT - B -

Office of Price Administration

Postal Building

Portland 4, Oregon

#### CUSTOM DRESSING OF TURKEYS

By Regional Order No. G-13 under Section 1499.13(c) of the General Maximum Price Regulation, the maximum prices for the service of custom

processing of live turkeys in Region VIII have been adjusted as follows:

(a) Ceilings:

Type of Service	Hens	Toms
Kill and haul	\$ .30 per head	\$ .35 per head
Loose	.035 per lb.	.03 per lb.
Boxed	.045 per lb.	.04 per lb.

(b) Definitions:

(1) The service of custom processing of turkeys "boxed" means the service of assembling, killing, bleeding, plucking, chilling, grading, head wrapping, and boxing.

(2) The service of custom processing of turkeys "loose" shall be as defined in (1) above except boxing.

(3) The service of custom processing of turkeys "kill and haul" means assembling, killing, bleeding and plucking. (This charge should be applied by dealers who do not have the proper facilities for chilling, grading, head wrapping and boxing.)

(4) "Region VIII" means the States of Washington and Oregon except Malheur County.

(c) Interpretation:

(1) The charges set forth in paragraph (a) are to be based on dressed weight. They are not cumulative, i.e. the kill and haul charge may not be applied in addition to the loose or boxed charge. It is not necessary for a processor to subtract anything from his charge if the grower performs the handling service, i.e. the full kill and haul reduction may be taken.

(2) The above prices are the only prices which

may be charged for processing services. Any charge of less than the prices fixed in this Order will be considered an attempt to evade Revised Maximum Price Regulation 269. Charges of more than those prices would be in outright violation of this Order.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 23rd day of October, 1944.

F. E. WAGNER

Attorney for Applicant. [20]

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[Title of District Court and Cause.]

#### ORDER OF DISMISSAL

On this 2nd day of December, 1944, this cause comes on to be heard before the Court for final disposition herein, and the Court being advised in the premises and having heard and considered testimony in the companion Cause Number Civil 2575, Northwest Poultry & Dairy Products Company, etc., vs. Chester Bowles, Administrator, Office of Price Administration, and it appearing to the Court that all of the information that is required herein was disclosed by defendant and its counsel during the trial of the said other case; whereupon,

It Is Ordered that the application requiring the respondent to permit inspection of inventory and records herein be, and the same is hereby, denied, and,



It is Further Ordered that the above cause be, and the same is hereby dismissed. Costs to neither party.

Dated at Portland, Oregon. this 2nd day of December, 1944.

/s/ CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed Dec. 2, 1944. [21]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To Northwest Poultry and Dairy Products Company, an Oregon Corporation, and C. W. Norton, President, and to B. G. Skulason and to Wilber Henderson, its attorneys.

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, applicant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment dismissing said action, made and entered in the above entitled action on the 2nd day of December, 1944.

Dated at Portland, Oregon this 27th day of February, 1945.

/s/ F. E. WAGNER

/s/ W. DUNLAP CANNON, JR.

Attorneys for Appellant Chester Bowles. Administrator

[Endorsed]: Filed Feb. 27, 1945. [22]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Comes now the plaintiff above named and as appellant in the above entitled action submits the following as his Designation of Record on the appeal of said matter to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Order to Show Cause
2. Return to Order to Show Cause
3. Answer
4. Order of Dismissal
5. Transcripts of Hearings on October 6, and October 2, 1944 on Motion for Order to Show Cause
6. Notice of Appeal
7. This Designation

Dated at Portland, Oregon, this 23rd day of March, 1945.

/s/ F. E. WAGNER

Of Attorneys for Appellant

[23]

State of Oregon,  
County of Multnomah—ss.

Due service of the foregoing Designation of Record is hereby accepted in Portland, Multnomah County, Oregon, this 23rd day of March, 1945, by receiving a duly certified copy thereof.

/s/ B. G. SKULASON

Of Attorneys for Defendants

[Endorsed]: Filed March 23, 1945. [24]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,

District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 25 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 2565, in which Chester Bowles, Administrator, Office of Price Administration is plainff and appellant, and Northwest Poultry and Dairy Products Company, an Oregon corporation, and C. W. Norton, President, are defendants and appellees; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed a duplicate transcript of the testimony taken in this cause.

In Testimony Whereof, I have hereunto set my

hand and affixed the seal of said Court in Portland,  
in said District, this 28th day of March, 1945.

[Seal]                      LOWELL MUNDORFF,  
   Clerk  
By F. L. BUCK  
   Chief Deputy Clerk [25]

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In the District Court of the United States  
for the District of Oregon

Civil No. 2565

CHESTER BOWLES, Administrator of the  
Office of Price Administration,  
Applicant,

vs.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon corporation,  
and C. W. NORTON, President,  
Respondents.

Portland, Oregon, Monday, October 2, 1944.  
10:42 o'clock A. M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Miss Cecelia P. Gallagher, Enforcement Attor-  
ney, Office of Price Administration, Portland  
District, appearing for the Applicant.

Mr. Bardi G. Skulason, Attorney for the Re-  
spondents.

## PROCEEDINGS

The Court: Now let me hear Mr. Skulason and I will come back to your case.

Miss Gallagher: All right.

Mr. Skulason: If your Honor please, this comes up on an order [1\*] to show cause, as your Honor knows, by the Northwest Poultry and Dairy Products Company, Civil No. 2565, and I have served a return on Miss Gallagher and filed the original this morning, and to state the matter briefly and in such form as I believe the Court can understand, I will say that the application is for an order authorizing the examination of certain records of my client of sales, purchases and disbursements concerning the processing and selling and marketing of turkeys between May 8th and August 10th. The application is made under a certain order issued from the Regional Office in San Francisco on May 2nd last, purporting to fix certain prices for the service, and the reason that we are resisting the application for the examination of the records is that we contend that this order is invalid, on two principal grounds:

First, that contrary to the Emergency Price Control Act in 1942 it disregards the custom prevailing in that industry for a long period of time before the enactment of that law, and of course before the issuance of this regulation. That is the first point.

The second point is—and perhaps there are three; yes—that the order is unauthorized by the Act;

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\*Page numbering appearing at top of page of original certified Transcript.

that it isn't a maximum price control regulation or order, but fixes an inflexible, arbitrary price for the service, and such that it amounts to a confiscation of the property of the respondents here.

I think, your Honor, I will have to go into details to [2] make myself understood by the Court.

The Northwest Poultry and Dairy Products Company is engaged, and has been engaged for about twelve years, in the processing and in the purchasing and marketing of turkeys. It is now under contract with the Government for the delivery of, I think, its entire product for the use of the military forces.

The Court: I don't think I need to keep Mr. Lenske here. What is the number of your Companion case, Mr. Lenske, the principal case? 2564 is your supplemental proceeding.

(Discussion here ensued pertaining to another case, after which proceedings herein were resumed at 10:47 o'clock A. M. as follows:)

Mr. Skulason: I stated to the Court that my client for some time has been furnishing practically all of its products, its turkeys, to the Government for the military forces, and that it amounts to a very large sum of money per year. The amount is not stated here but my information is that it runs into millions.

The Court: Whose business? Your client's business?

Mr. Skulason: Yes. That is the gross business,



I guess, but they have a very large business in turkeys. Now so that this may be placed in clear perspective, if I may——

The Court: How does jurisdiction happen to be here? Don't they operate elsewhere through the Northwest?

Miss Gallagher: Their operation I think is entirely within the State of Oregon, your Honor. [3]

Mr. Skulason: Yes, practically so. I don't think there is any question about jurisdiction. I admitted these matters in the application as to jurisdiction and authority to proceed here, provided the orders under which they are proceeding are valid.

The Court: This is your home office in Portland?

Mr. Skulason: Yes, your Honor. Now they say that for a period of the last eleven years or so the respondent corporation has been engaged in this business in Portland, and the other respondent, Mr. Norton, has been its manager; and then it is stated that during all of that period it has been the custom of wholesalers, processors and purchasers of turkeys to haul and pick turkeys for the growers on a per head basis, provided they later purchased the turkeys, and that until 1943 that charge was 20 cents per head for picking—there is some error here. Anyhow, it amounted, with the haul, to 23 cents per head for hens and 25 cents for toms, and it is important to keep those figures in mind, 23 and 25, and no regulation on a per pound basis. That becomes quite relevant here, I believe.



Then in 1943 these respondents and the majority of other wholesalers and processors in the business in Oregon and in Washington advanced this price to 25 cents per head for hens and 28 cents per head for toms.

Then in November, 1943, the Office of Price Administration issued a rule prohibiting this charge, prohibiting the processor, wholesaler, from purchasing dressed turkeys from the growers, [4] and the net result of that was that the price was put back to where it had been before.

Then on the 2nd of May of this year Order G-93 was issued from the Regional Office of San Francisco and that brought in something entirely different. It was stated therein that it was a maximum price regulation, so stated in the introduction to the order, and the kill and haul prices were fixed at 30 cents per head and 35 cents per head, respectively, but loose turkeys were put on a per pound basis of 3-1/2 cents for hens and 3 cents for toms, and boxed turkeys were put also on a per pound basis.

Now then, there were certain definitions attached to this order as to what constituted loose and boxed turkeys, and so forth, with the net result, as claimed in this return, that upon the average weight of turkeys in this locality the cost of processing was advanced from 52-1/2 cents for hens and 72 cents for toms, a jump from the pick and haul of 30 and 35 cents, or thereabouts, and my client says that they can't do business on that basis: they can't get the

turkeys from the growers. The growers won't sell them to them if they have to stand that heavy charge of processing. They can do business on the basis they are doing business on now, of the one fixed by the Price Administrator, of 30 and 35 cents per head, whatever it is, and the great objection, your Honor—and it is not only the objection by my client here but there has been a convention held here of some seventy-five representatives in this business in Washington and Oregon; the [5] matter has been taken up back and forth by wire and telephone with Washington, and there have been numerous conferences about it, and it is claimed everywhere by those in the business that my client is in that this order is unlawful and confiscatory and violates constitutional rights.

Now the practical result here, which we will show if any evidence is taken in this case, is that——

The Court: Well, you haven't been sued yet, have you?

Mr. Skulason: We have been required to come in here to respond to this order to show cause.

The Court: This is for discovery only.

Mr. Skulason: Yes.

The Court: You haven't been sued yet?

Mr. Skulason: No, but we have sued.

The Court: Oh.

Mr. Skulason: We have brought a suit.

The Court: To restrain?

Mr. Skulason: Yes. That is a part of our return. I will come to this afterwhile. Getting to this

practical situation, that is why I am obliged to ask the Court for an early hearing of the matter and an early disposition of it. The growers are refusing to sell turkeys to my clients on this basis.

The Court: This is the turkey season?

Mr. Skulason: This is the turkey season, and the Government is demanding the turkeys so they may be in the hands and in the use [6] of the military service at the proper time, and it is really very acute.

Now we also claim this order is void because it is practically purely local. It is not of general application. They started out with defining Region 8 as California, Washington, Oregon, and Idaho and Nevada, and parts of Arizona, and then they cut that down to Washington and Oregon except the County of Malheur.

We also claim it is void because it is discriminatory, in that we are compelled to make this charge, while the cooperatives who are in the same business, if they make the same charge are permitted to return by way of dividends to their members the excess in this charge and we are not permitted to do it.

Now let's look at this order. Let us look at this order, your Honor. It is attached as an exhibit to the return.

The Court: Will you step over there with Mr. Skulason and check your file with all the copies he has. All that I have is the Government's application.

Mr. Skulason: I just filed the return this morning, your Honor.

The Court: All right. It hasn't come in to you yet?

The Clerk: No, it has not come in.

The Court: When did you bring your original proceeding, the complaint?

Mr. Skulason: I brought that Friday afternoon.

The Court: Friday afternoon? [7]

Mr. Skulason: Yes.

The Court: Can you get those, too. It is a new case he brought against the Government Friday afternoon.

Mr. Skulason: A new case. That is the case of Northwest Poultry Company against Bowles.

The Clerk: Yes.

Mr. Skulason: Now, your Honor, look at these orders. Those regulations give a headache I think not only to the people in the position of my clients but to the lawyers who are called in to interpret them and try to understand them. They started with Order G-93 and they say that under section so and so, "The adjust maximum price for the service of custom processing of live turkeys in Region VIII shall be as follows:" then comes this kill and haul, 30, 35, and loose 3-1/2 and 3 cents a pound.

Now Region VIII they say comprises those states I mentioned.

Now it might have been possible to work under that order if there hadn't come with it at the same time this Exhibit B, which copies the items, the portion as to what the charges may be and then adds this as an interpretation:

“(2) The above prices are the only prices”—they underscore the word “only” — “which may be charged for processing services. Any charge of less than the prices fixed in this Order will be considered an attempt to evade Revised Maximum Price Regulation 269. Charges of more than those prices would be in [8] outright violation of this Order.”

In other words, as I understand that language, it is not the maximum regulation only; it is an absolute fixed price, and I find nothing, as far as I have read this Act, authorizing the issuance of any such order. The Act is a maximum price regulation, and I suggest to the Court that they had no right to fix a definite invariable, unchangeable price.

Now we have set forth the various reasons why we claim that this order is void. Then we have said that we have commenced a suit against the Administrator and against my worthy colleague here and Franz Wagner, who are charged with the execution and enforcement of these orders, and we brought that under Section 2(m), which confers jurisdiction on this Court regardless of the amount involved in cases apparently such as these, where it is claimed by the citizen or the man in the trade that the regulation is unauthorized and void.

The Court: Well, is that under the amendment to the statute?

Mr. Skulason: It is under 2(m), the amendment. Yes, it is a recent amendment. Now I filed the complaint and service——



The Court: You could not sue prior to the last Congress in this Court.

Mr. Skulason: No. This is a late amendment.

The Court: Any question about that, Miss Gallagher?

Miss Gallagher: Yes, there is, your Honor.

The Court: There is a question: [9]

Mr. Skulason: Yes.

The Court: All right. Proceed. I will hear her after you.

Mr. Skulason: Now just how we are going to get jurisdiction of Chester Bowles, perhaps we can't serve him here; perhaps you will be authorized to appear for him; I don't know.

The Court: Don't overlook Miss Gallagher has just said she questions your right to bring the suit at all. We will hear her later.

Mr. Skulason: Yes. Certainly. I want to explain what we have done. There is a question there whether we have a right to bring it at all, of course, but to bring it under this amendment, which says, I think, in cases like this a suit may be brought for declaratory relief in the District Court of the locality where the people reside, where the regulations are operated, and the amount involved is dispensed with.

The Court: Apparently she is going to dispute that.

Mr. Skulason: All right. I think perhaps she will. I think there is some ground for that argument, that it perhaps cannot be done, but I am



acting, your Honor, with the advice of Mr. Diggs, of Washington, D. C., who has been the attorney for my client and claims to be an expert in these OPA matters, which I certainly disclaim to be, and it is his opinion that the court has jurisdiction and that this suit is properly to be brought.

Now before I stop—we will leave that right there—as bearing upon this matter, the practical matter here of getting [10] the turkeys into the trade, into proper channels, I have evidence here in writing, your Honor, to the effect that a representative of the office here has been going around to the growers, to the farmers from whom my client buys the turkeys, and has threatened them with dire consequences if they continue to sell to my client, and it seems extraordinary, but here is the writing signed by two people on the 24th of September, in which Mr. Rodeback, I think connected with the Office, went to several of these people, according to this writing, and said that Mr. Norton was not an honest man, they should not deal with him; that he was a crook, a rebel and a cheat, and that he is trying to monopolize the turkey business, and various other things of this sort, which to me are extraordinary, but there is the writing anyhow. That is partly the basis for my allegation that they are threatening to invoke the sanctions and penalties of the Act, and that we have no remedy and we are properly here in equity for a declaratory judgment as to what these orders mean and whether or not we must comply with them. And the very last thing this morning before I left the office

Mr. Norton called me and urged upon me the importance of an early disposition of this whole matter. I don't know. I have just told your Honor how the matters stand.

The Court: Did you draw the complaint or did the lawyers, your associates in Washington?

Mr. Skulason: I drew the complaint myself. I take full responsibility, and he is really not associated. I have been going on his opinions—on his letters. [11]

The Court: Miss Gallagher.

Miss Gallagher: I don't know whether to start first or to start last, your Honor. I am of the opinion that Mr. Skulason has the cart before the horse. The real purpose of our petition is whether or not we may have an order from your Honor to go into the offices of the Northwest Poultry Company and make an inspection and copy of their records. The Act itself, and as it originally was amended under Section 202 (a), (b) and (e), provide that the Administrator may require the copying of records—may require the inspection and the copying of records, and that upon a refusal on the part of any person—"In case of contumacy by, or refusal to obey a subopena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the

court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of Section 4 (a)."

Subsection (b) refers to the requirement that, "The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, to furnish any such information under oath or [12] affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories", and so forth, to make it quite clear that our authority to come in to your Honor and ask for this requirement, order, applies not only to subpoenas but also to an inspection of records and a copying of records.

We agree with Mr. Skulason that it is very important in this situation. The turkey season is at hand. Way back in May, shortly after the issuance of G-93, the order referred to, we had some considerable discussion with Mr. Norton as to the effects of the order. Since, and during that early spring season, which is called the breeder season, we received a number of complaints that Mr. Norton was not following out the requirements of G-93.

Early this August, on the 1st day of August, before the opening of the fall season of the turkeys,

in order to do what we could to get things straight, running smoothly before the turkeys began coming in, and upon the receipt of still more complaints that Mr. Norton was not deducting the full amount required to be deducted under G-93, we went to Mr. Norton—Mr. Rodeback did; Mr. Rodeback is an investigation in our office, who is present in court today—and asked Mr. Norton if he might take a look at his records and make a copy of them. Our relationship with Mr. Norton in the past has always been a most friendly one. We have had a great many differences of opinion with him, but there [13] has been no animosity between us, and at that time we made our request formally and yet without writing. Mr. Norton said then, “I will tell you anything I want you to know but I don’t want you to look at our records, and I don’t want you to copy them.” He told us then, and has told us since, he wasn’t following the requirements of the Order G-93. However, we didn’t feel it was a good way to try a lawsuit to come into court here and ask for an injunction against Mr. Norton and base our whole case upon his statement to us that he had been charging only 30 and 35 cents as against the higher price we maintain he was required to charge. Therefore we wanted to inspect his records to find out from whom he was purchasing and to find out what he was paying, to get some documentary evidence to back up our request for an injunction.

After the August 1st request was made, on August 3rd Mr. Rodeback went back to him and again

talked to him, without again presenting any requirement in writing to him. On that date he said he would like to talk to his lawyers, both in Portland and in Washington, D. C. He said, "I am not refusing you these records but I don't want you to see them yet, until I have had the advice of my attorney." Mr. Rodeback came back and asked me about it. I said, "Let him talk to his attorney."

In the meantime I had talked with Mr. Norton on the telephone. Mr. Norton at ten o'clock the next day hadn't talked to his attorney in Washington. At 11:45 Mr. Meinke called, saying that they had talked to their attorney in Washington; that some [14] memo was being sent by Washington OPA to Portland OPA, and could we wait until the 7th or 8th of August to ask for our inspection?

We did wait until August 14th, and in the meantime we had consistently met with the failure to allow us to inspect and to copy.

On August 14th we served on Mr. Norton an original inspection requirement, signed in person by Chester Bowles, and at that time met again a refusal either to allow the inspection or the copying. At one time he said, "You may look at them but you may not copy them." The records are long and voluminous. It would be impossible for an investigator or an attorney to look at them and carry away in his mind sufficient facts upon which to conduct any further investigation. And since August 14th, even since the filing of this petition for an order, I have talked to Mr. Norton. In each instance he



has said, "No, I will not allow you to copy our records."

That is our story on the request to inspect records. We have had Mr. Norton's admissions. We have had a number of complaints, which have led us to the conclusion Mr. Norton is in violation of Order G-93, and probably of Maximum Price Regulation 269, but we have not wanted to file our injunction suit, or any other kind of a suit against Mr. Norton without further information. In order to get that information we request an order from your Honor allowing us to go in and inspect and copy his records.

That is our story on our original petition, your Honor. [15]

The Court: Now you have been sued, to be enjoined?

Miss Gallagher: Yes. I have not yet been served with those papers. I suppose I shall be.

The Court: Well, I want to hear you, though, to the extent you are prepared, on Mr. Skulason's points.

Miss Gallagher: Now so far as Mr. Skulason's showing in his return to the order, I would be constrained to say, as an answer to our request, that the material alleged therein is immaterial, on the ground particularly that this Court does not have jurisdiction to pass upon the validity of an order or a regulation.

The Court: Now argue that.

Miss Gallagher: Well, we start with—there are a long series of cases, your Honor.



The Court: What does that amendment passed this spring provide?

Miss Gallagher: It is my contention that it does not provide—that it does have nothing to do with this kind of a proceeding. Do you have a copy of that?

Mr. Skulason: Yes (passing paper to Miss Gallagher).

Miss Gallagher: I will tell you in our words first, your Honor, what we think it means. Formerly, before the amendment of the Act, a number of rationing regulations issued under the Second War Powers Act carried within them a provision that rationed foods, foods rationed under this order, shall not be sold at over the ceiling prices provided for in other maximum price regulations. Under those provisions of the regulations the Office of Price [16] Administration on a great number of occasions brought what we call suspension order proceedings, an administrative proceeding, against people who were selling rationed foods at over ceiling prices. It was what we call a cross-sanction, or what was called a cross-sanction, and there was a good deal of complaint against that, and Section 2(m) provided that no more cross-sanctions may be put into the regulations; no further ration regulations may require that the rationed goods be sold only at ceiling prices, and that is why Section 2(m) was put into the regulation.

The Court: You mean into the statute?

Miss Gallagher: Into the statute; yes, your Honor.

The Court: That is all it says?

Miss Gallagher: I will be glad to read it to your Honor. That is what we say it says.

The Court: I understood as general information that Congress had given jurisdiction to District Courts to contest the validity of regulations, which was denied by the language of the original Act. Am I wrong about that?

Miss Gallagher: I think that is not correct. Section 2 (m) says that there shall be no cross-sanctions. The Congress in its Senate Report used this for an illustration: A farmer who had refused to comply with the directives of the War Foods Administration was denied the use of gasoline under the gasoline regulation and the Congress has said in its Senate Report that is the sort of thing it wants to avoid. We think in amended regulations to [17] that extent that they also want to provide against prohibiting price violations in the ration regulations.

The Court: Is 2 (m) very long?

Miss Gallagher: No, it is not.

The Court: Will you read it?

Miss Gallagher: "No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall

impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed.”

That is the part I have been discussing, where cross-sanctions have been eliminated. This is the part Mr. Skulason referred to.

“Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or his place of business for [18] any order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.”

The Court: What happened to the original language in the Act which denied jurisdiction to the District Courts?

Miss Gallagher: It is still in the Act, your Honor. The provisions for testing the validity of a regulation are just as they were, except they have been amplified.

The Court: What section? Was that close to 2 (m)?

Miss Gallagher: No.

The Court: That doesn't matter.

Miss Gallagher: It comes under protests as such.

The Court: It doesn't matter.

Miss Gallagher: It is a whole section by itself. They have amplified that. Originally the Act said within sixty days of the issuance of a regulation any party may appeal to the Administrator for a review of it and then from the Administrator to the Emergency Court of Appeals. The new one is giving longer time and different periods of time in which he may make his protest against the regulation.

The Court: Now Mr. Skulason argued—let me ask you, how did you understand his argument about Order G-93? [19]

Miss Gallagher: Well, I understand he thinks that it is a bad order; that it is an unfair and discriminatory order.

The Court: No, no. Pardon me.

Miss Gallagher: Oh.

The Court: He said it is a price fixing order, not maximum price fixing, and he said the statute does not authorize price fixing.

Miss Gallagher: The order says so much, 30 and 35 cents may be charged for picking and hauling, 2 and 3-1/2 cents for loose dressing, 4 and 4-1/2 cents shall be charged for boxed—dressed and boxed; that pick and haul means only hauling of birds in from the farm, killing them, picking the

feathers off, and that is all. That the deduction for that shall be 30 and 35 cents. If the processor goes further and picks them, head-wraps them, chills them and boxes them, or doesn't box them, he shall charge a higher price; the deductions shall be less than that, on the theory that is his price, his cost for doing that service, and that it should be taken from the producer to repay to the processor the amount it costs him to process the birds in that way. I don't think it is a price fixing order. The interpretation is true. It is said you must charge this much and no less; otherwise you are returnable, but a true cooperative—a cooperative maximum price allowed to the grower for the sale of the dressed bird.

The Court: I see. Now he says it is discriminatory between his client and the cooperative. [20]

Miss Gallagher: The cooperatives are under their past practice. They have always been able to return to their members money that is collected, money for which sales are made over and above the ceiling price. They sell at the ceiling price but the returns they have taken in during the year are returnable, but a true cooperative—a cooperative is pretty carefully defined in Supplemental Order No. 84. That is an advantage to the cooperative; that is true—an advantage which they have themselves built up over years of their own practice, however. A cooperative may not charge less than 30 or 35 cents, but the net return is returnable to the members, and in the end they do receive an



advantage, as all cooperatives under these circumstances do.

The Court: Is your client the largest dealer in turkeys?

Mr. Skulason: My client handles one out of every three turkeys in the State of Oregon, your Honor.

The Court: Who are the other large operators?

Mr. Skulason: I don't know who may be the others. This has been, if I may say so, this has been considered by the operators in Oregon, and Washington as well, and if the Court would permit me to I would like to read certain resolutions which they adopted as to the point as to the extensiveness of this.

The Court: We will have Miss Gallagher finish, then I will hear you.

Mr. Skulason: Yes.

Miss Gallagher: There are a number of other operators in Oregon: [21] Marion Creamery, Washington Creamery, Mr. Martindale—I don't know what he calls his plant; Swift & Company, and Douglas Cooperative, and one or two more.

Mr. Skulason: Mr. Norton is, if not the largest, one of the largest; I think the largest in the state.

Miss Gallagher: In the State of Oregon, yes. This is one thing I should like to urge upon your Honor somewhere along the line, and that is there are other processors in Oregon, and in Portland, who have been following the provisions of Order G-93, whether they like it or not; there is a great deal of protest against the order—I am frank to



state that; but otherwise they have followed the provisions of the order. Mr. Norton has consistently refused to follow the provisions of the order and up until a short time ago the reports coming to us are that Mr. Norton is receiving all the turkeys; the other processors are not. A man just down the street and across the street from Mr. Norton, who, on the 16th day of August, when the new season started and G-93 was put into effect by this Mr. Clark, on that day he ceased getting any turkeys at all. Mr. Norton, we are told—again we don't have the documentary evidence to prove it—has had turkeys up until the middle of last week. Now whether the situation has changed since that time or not I don't know, but up until the 25th of August, at any rate. Since that date I don't know. Mr. Norton now says he will talk to us only in court and we don't get any information from him. [22]

I am not criticizing Mr. Norton personally, because, as I say, we have been friendly all through the matter. It is an extremely serious situation. Mr. Norton is in violation of the requirements and he continues to be in violation. If we can do nothing about it by looking at his records to build up some kind of a case to test out the question whether or not he is in violation, he will continue to gain an advantage over all the other processors who are complying with the regulation, which of course is eminently unfair, and our hands are tied until we can get in and look at his records and get the information on which to bring a case against him;

unless, in the meantime, a change comes in the regulation. That I can't predict.

Mr. Norton's real remedy, in my opinion, is a protest of the regulation to the Emergency Court of Appeals. The way has been open to him all the way along since last May, when it was first issued, and since the quarrel about the thing, the protesting informally about it has begun, to my knowledge there has been no protest made to the Administrator in a formal manner, nor to the Emergency Court of Appeals. That could be done and I think should be done, rather than to argue the question out before your Honor.

I don't know whether you want to hear us on this or not but Mr. Rodeback, our investigator, is in the courtroom and I think he would make a very definite denial of the allegations in the letter referred to by Mr. Skulason. [23]

The Court: He is entitled to deny it if he wants to and if you want to put him on.

Miss Gallagher: If you care to hear him in the matter I will put him on.

The Court: I repeat, he is entitled to make the denial if you want to put him on.

Miss Gallagher: Mr. Rodeback.

The Clerk: Will you state your name, please?

Mr. Rodeback: Donald E. Rodeback.

## DONALD E. RODEBACK

was thereupon produced as a witness in behalf of the Applicant and, having been first duly sworn, testified as follows:

## Direct Examination

By Miss Gallagher:

Q. Mr. Rodeback, were you present in court to hear the quotations from a letter read by Mr. Skulason?

A. I heard part of the quotation, not all of it.

Q. Did you hear the allegation that you had been out in the territory in the district and had called Mr. Norton certain names and had accused him of certain practices?

A. Yes, I heard that.

Q. Have you ever called Mr. Norton a cheat, or any of the other things they say you have said?

A. I have not. All I ever did was to explain to the grower the [24] interpretation of the regulation as it had been explained to me by our office and that if he was not in compliance with G-93 that he was in effect causing the grower to receive more than the ceiling under 269, and if that fact was proven that the grower would be liable for the amount of the overcharge under 269, as the Administrator would have a treble damage claim thereby.

Miss Gallagher: Thank you. That is all, unless Mr. Skulason wants to talk to you.

Mr. Skulason: May I question him, your Honor?

The Court: Yes.

(Testimony of Donald E. Rodeback.)

Cross Examination

By Mr. Skulason:

Q. Mr. Rodeback, a little bit back—do you know Mr. Leonard W. Spath? A. Yes.

Q. The Spath Hatchery & Poultry Farm, Route 6, Box 757, Portland? A. Yes, I do.

Q. You also know his wife, Martha Spath?

A. Yes, I do.

Q. Did you call on those people on September 24th? A. Yes, sir.

Q. And talk to them about this matter of Mr. Norton and the regulation? A. Yes, sir.

Q. Did you tell him that they should not sell turkeys to Northwest [25] Poultry for the reason that they are not charging enough for hauling and picking? A. No, sir.

Q. Did you tell them that?

A. I didn't tell them that. I told them that they shouldn't sell turkeys to anyone unless the deduction called for under Order G-93 was made; that if they did receive a sum less than the amount called for by G-93 that they would be considered in violation of Maximum Price Regulation 269.

Q. Did you also tell them that they got under-grade and underweight on every load that they sold to Northwest Poultry?

A. No, sir, I didn't. I repeated a statement made to me by another grower, which indicated that that had happened in his case, but I didn't make any specific allegation. I repeated hearsay; nothing more.

(Testimony of Donald E. Rodeback.)

Q. Did you also tell them that if they would sell turkeys to the Columbia Produce they would get honest weight and would not be undergraded?

A. No, sir.

Q. Particularly—— A. I——

Q. How?

A. I didn't say that. I told them that I was aware that Columbia Produce Company, which was directly across the street, had submitted their records to examination and it was found that they had never [26] been in violation of Order G-93 up to the time their records were checked.

Q. Did you also tell them that they should deal with an honest man instead of a crook, a rebel, a cheat, a very dishonest man like Mr. Norton, of the Northwest Poultry?

A. No, sir, I didn't make any such statement.

Q. Did you tell them that Mr. Norton was trying to monopolize all the turkey business?

A. I did say that, in effect, Mr. Norton was— had a monopoly on the turkey business because of his being in violation of G-93, because I had been told by other processors in the state, where competition was direct in the community, that they were not getting turkeys that they had in normal times; that if all competitors are on an equal basis all turkeys are more or less evenly distributed, but the Northwest Poultry & Dairy Products Company has received more turkeys since they have been operating on the basis they have than they normally would have.



(Testimony of Donald E. Rodeback.)

Q. Did you also tell these people that Mr. Norton would keep his skirts very clean, that he would not have to stand any loss from the turkeys he is buying now, "but you poor farmers will, if you sell your turkeys to Northwest Poultry under these conditions, will have to refund to the Government as high as \$1.20 per head on every turkey sold to Northwest Poultry"?

A. I made part of that statement. I didn't refer to the farmer as "poor farmer", and I didn't say that the amount would be \$1.20. [27] I did say that as far as Northwest Poultry & Dairy Products Company were concerned, that the Administrator would not have any cause of action for an overcharge nor an undercharge; that they would have cause to bring an injunction suit only; that if there was any treble damage action it would be against the farmer only.

Q. Did you interview other producers about the same time?      A. I saw one other producer.

Q. How many did you talk to?      A. One.

Q. Who was that?      A. Mr. Smith.

Q. Yes. Is his wife's name Rose?

A. I wouldn't know.

Q. Did you talk to them on or about September 26?      A. Yes, sir.

Q. Why did you go to see them?

A. I went to see them because it was known to me that they had sold turkeys to Northwest.

Q. You were trying to stop them from selling turkeys to the Northwest?



(Testimony of Donald E. Rodeback.)

A. I was not. I went there to request Mr. Smith to show me invoices, to let me copy the invoices on sales of turkeys made to Northwest Poultry Company. I might add, if I may, that any conversation I had with Mr. Smith was more or less informal, beyond the point of just asking to see his records. I have known the man [28] for ten years and talked to him as a personal acquaintance, and I thought as a friend. He was very much wrought up over the situation and we talked for some time. As I say, I told him that anything I said to him was my own personal view and certainly off the record, so——

Q. Off the record?

A. In connection with the turkey matter I did ask him for his invoices. As a matter of fact, when I called on Mr. Smith I took with me a subpoena duces tecum, issued by our office.

Q. Exactly.

A. And served it, and beyond that, as I say, any conversation we had was off the record.

Q. You were sent out from this office to see these people, weren't you?      A. I was; yes, sir.

Q. You didn't go out for a personal call on them?

A. I was sent there merely for the purpose of serving the subpoena duces tecum, so I had official instruction from the office to call upon him and serve the subpoena, but, as I added, I knew him personally and talked to him for some little time after the subpoena had been served.

(Testimony of Donald E. Rodeback.)

Q. How long have you known Mr. and Mrs. Spath?

A. I met them only on the evening that I called there. I did know, or I had seen Mr. Spath around the Terminal Sales Building, in that he worked for Mr. Smith and is an electrician. I was in the [29] Terminal Sales Building for several years myself.

Q. You regard this Mrs. Rose Smith as a truthful person, do you, Mr. Rodeback?

A. I don't know Mrs. Smith. I had never met Mrs. Smith prior to the day I called there.

Q. Now did you tell the Smiths that Norton, by his stand, deliberately misled the growers to make them think that he was sticking up for them and was giving them such a good deal and the only reason he was doing it was so that he would get all the turkey sales and the others killers would not get any turkeys, which you said was very unfair and unjust? Did you so state?

A. I said part of that. I didn't make the statement—that statement fully, no.

Q. How is that now? A. Now——

Q. What did you say? What did you say?

A. I told them that Mr. Norton, by adopting and following the policy that he had in connection with Order G-93, was in a position to get—I think I used the term the lion's share of the turkeys, although practically in the same breath I stated, and my statement was reiterated by the Smiths, that Mr. Norton could not possibly handle all the

(Testimony of Donald E. Rodeback.)

turkeys for the duration of the fall turkey operation; any processor in the business would necessarily get birds perhaps to the capacity of his plant, because of the labor situation particularly. But I did state that if the growers were [30] selling to the Northwest Poultry & Dairy Products Company for a deduction of less than the amount called for in Order G-93, that the grower would, in effect, be getting more than his ceiling price and be in violation of Maximum Price Regulation 269, and that they, therefore, should not sell to anyone without insisting on the proper deduction being made until this matter was properly settled. Then I said if the thing was settled in the courts and it was proper that a rebate should be made, that Northwest or anyone else would undoubtedly be very happy to make such a refund but the law would not have been violated.

Q. Did you refer to a man named Clark?

A. In talking to the Smiths?

Q. Yes.

A. I could not be sure whether I mentioned Mr. Clark or not. I possibly did.

Q. Do you know a man who is in that business by the name of Clark?

A. He is manager of the Columbia Produce Company.

Q. Yes. Did you tell them this, or say to them, "Why don't you sell to an honest man like Clark?" Did you say that?

(Testimony of Donald E. Rodeback.)

A. No, I don't believe I did. I told them that I was sure that if they sold to Mr. Clark that they would get satisfaction; they would get a fair grade and fair weight.

Q. Did you tell them this, Mr. Rodeback: That some grower had taken a truck or car—this is the way it reads—went right down the middle of his trucks and split them in half, sold half to Clark, [31] Clark charged the high killing charge; two weeks later he sold the other half to Norton, who charged him the 30 and 35 cent kill; he expected to make two or three thousand dollars more than on his first bunch but he actually made less; Norton did not weigh right; told him any grower that did that was crazy. He sorted out all his culls and sold them last. He said—no—sold them last. I asked him who it was that wanted the high kill when it was so unjust; accused of him being Swift's, and so forth. Did you say anything along that line?

A. No, sir. That—the statement that I made in that connection is not even properly related in that allegation. I can repeat the statement that I made—that that was apparently written from, if the Court is interested in it, but I didn't make that statement in any sense.

Q. What did you say, apparently written what?

A. Pardon me?

Q. What did you say about this was apparently written?

A. I said there is nothing in that allegation just read that is correct.

(Testimony of Donald E. Rodeback.)

Q. Did you tell them this: That you had a lawsuit now on, and that the Government was going to collect three times the amount they overcharged, and that they could not make it stick, referring to the Northwest?

A. No, sir, I didn't make that statement.

Mr. Skulason: Well, there is so much more of this stuff here—— [32]

The Witness: I may say in connection with that, that I made a statement but that is not an interpretation, or the correct interpretation, of what I stated.

Q. What was your purpose in going out to these people, Mr. Rodeback?

A. My purpose in going out to them was to pick up invoices establishing if there was a violation of the Order G-93.

Q. You were sent out by whom?

A. I was sent out by the Portland District Office.

Q. Who is your immediate superior?

A. Miss Gallagher.

Q. And you are still in the employ of the Price Administration?      A. Yes, sir.

Q. Have you received notice that you are going to be fired?      A. No, sir.

Q. Hasn't the matter come from Washington on account of what you did here that you are going to lose your job?

A. No, sir. I hadn't heard of it.



(Testimony of Donald E. Rodeback.)

Mr. Skulason: Well, that is all I want to ask him, your Honor.

Redirect Examination

By Miss Gallagher:

Q. Is it your practice, is it the practice of our office, Mr. Rodeback, in following up any kind of an investigation, to go not only to the one person you are investigating but also to go to as many producers as possible, or to as many sellers as possible who have had dealings with that one person you are investigating? [33]

A. Yes, with every case.

Q. Is that the reason you went out to Mr. Park and Mr. Smith?

A. Mr. Spath and Mr. Smith.

Q. To Mr. Spath and Mr. Smith, yes.

A. They were known to have sold to Northwest, and that is the reason they were called upon.

Miss Gallagher: Yes. Thank you.

Mr. Skulason: That is all.

(Witness excused.)

Mr. Skulason: Now, your Honor, if you are going to take testimony, I don't know what the Court is going to do with this—if you are going to take testimony of course I want to submit testimony as to the actual practical operation of this order, and I am ready to do it just as soon as I can get Mr. Norton and some other witnesses over here, but I didn't know how far we were going this morning.



The Court: You ask for a temporary restraining order?

Mr. Skulason: Well, I have asked that pending the suit they be restrained. I haven't asked for a formal order, but pending the suit that they be restrained from enforcing this order. Our whole theory is this order is absolutely void and, therefore, any proceeding under it is void.

The Court: I understand. I will try them both together.

Mr. Skulason: May I make another observation, your Honor? It [34] will help the Court to understand the practical situation here. I have here a document dated September 11th, 1944, addressed to the Food and Price Section of the Office of Price Administration, 1208 Bedell Building, Portland, Oregon. It is brief but I think interesting.

"Over seventy-five turkey growers from Washington and Oregon, owning nearly 300,000 turkeys, met at Portland, Oregon, in the Bedell Building September 11, 1944, at the request of Mr. McCargar, Food Price Section of the OPA, to discuss the new orders covering the marketing of the 1944 crop of turkeys.

"After a general discussion between the OPA and the growers, Acting-President of the growers, Mr. A. L. Hamilton, of Chehalis, Washington, selected a seven-man committee to work with him in outlining changes needed in the new order G-3 to make it acceptable to the turkey producers of Oregon and Washington. It was felt that the enforcement of Order G-3"—

The Court: 93?

Mr. Skulason: No. There is another one called G-3, sort of a clarification of G-93.

Miss Gallagher: No. G-3, Mr. Skulason, is quite different.

Mr. Skulason: Well, it defines who is a wholesaler and processor, yes; but the both of them are together and they are both included in this suit. I have attacked them both.

"It was felt that the enforcement of Order G-3 as it is at present would result in a definite loss in the net profit to [35] the turkey growers.

"The changes in G-3 urgently demanded by the committee are as follows:

"1. That the processor be allowed to retain his status as heretofore regarding the processing and wholesaling of turkeys at full ceiling prices. This to leave the wholesaler in the same position he had prior to the Order G-3.

"2. That the maximum price charged by the processor to the turkey growers for hauling, killing, picking and cooling be no more than 30 cents each for hens and 35 cents each for toms", the present charge.

"3. That these changes be effective in the states of Washington and Oregon only."

This is signed by quite a large number of them—by the Acting-President and others.

Then on the assumption that anything connected with this may enlighten your Honor—it may be that you know wall about these regulations and Acts—I

would like to ask permission to read a letter addressed by the National Turkey Federation to Mr. C. W. Haldeman, Head of the Poultry & Egg Section, Food Price Division, Office of the Price Administration, Washington, D. C., dated September 18, if I may read that, your Honor.

The Court: Yes.

Mr. Skulason: "The controversy on G-93 goes on and on. It is very evident that Miss Kent is obsessed with the idea that G-93 [36] should stick, and it is going to stick if it kill her. Frankly, I think it has become a matter of principle with her to keep the order in force. I doubt seriously if she is taking into consideration what would be best for the industry. I may have misjudged her, but after talking with turkey growers and processors all over Oregon and Washington, I find that practically no one in this area wants G-93.

"The reason I am bothering you again is that our Turkey Federation representatives in Washington and Oregon have requested more assistance. Miss Kent has made the statement that very few people in this area are protesting against G-93. After traveling all over this area, I can truthfully assure you that the overwhelming majority of growers and processors want the order revoked or the correct interpretation given to it.

"Enclosed is some of the correspondence and wires on this expressing the feeling of many people. This is a fair cross-section of the whole problem. On top of the pile is a copy of my letter to

your office of June 6th. This summarizes the whole thing and gives you the whole picture in a nutshell.

"The processors in this area actually fear the wrath of the growers after the war. They are afraid to charge this excessive amount for fear that growers will not come back to them after the war."

Well, they are leaving now.

"The ill effects of this order are mainly two-fold. First, [37] it is forcing growers to process at home and to establish their own community processing plants. This will mean a poorer quality product than if the birds could be marketed through the plants that are equipped to do the job properly and to take care of the birds after they are dressed.

"Another ill effect is that this order gives cooperative marketing agencies an unfair advantage over independent marketing agencies. I personally am very much in favor of cooperative marketing but do not like to see co-ops given this unfair advantage over independents. Some of the co-ops are using G-93 as a selling point to get growers to market through co-ops. The cooperative can pay back to the grower—as patronage dividends—the overcharge for processing that G-93 makes mandatory.

"The marketing methods that have been in use in Washington and Oregon represent a progressive step that should not be discouraged. Here growers and processors obtain their fair share of income from turkeys and speculation is largely eliminated from the marketing deal.

“As the executive officer of the organization representing the turkey growers of this country, I make this final appeal to you to see that justice is done and that the vanity of one individual not be allowed to prevent the sensible and practical solution of this matter.

“This G-93 was never intended as a minimum processing charge but to set a maximum. If it could be interpreted only as [38] maximum processing charge, it would be satisfactory to everyone concerned. No one has ever yet been able to give me an answer as to why the order should be interpreted as setting minimum processing charges. Processors do not want to charge these excessive processing prices and growers, of course, do not want this, as it means a loss of thousands of dollars to many of them.

“Some say that there is one large processing outfit that influenced the issuance of this G-93 to give them an excessive margin of profit. Growers name the firm, but I cannot, of course, go to that extreme without making myself liable to prosecution.

“As in the past, the executives of the National Turkey Federation approach the Office of Price Administration with the attitude of friendly co-operative.”

And so does my client, your Honor.

“It is our conviction that you are taking the action on all matters that you sincerely and honestly believe to be for the best interests of every-



one and to the final end of preventing and controlling inflation. We desire to continue to work on this basis.

“To assure you that we prefer to work on this basis, let us look for a moment at this G-93 matter and some of the things we might have done.

“The case of Northwest Poultry and Dairy Company lends itself readily to public ridicule of OPA. Last year, this company raised its processing charges a few cents, I believe to 30 cents [39] each for hens and 35 for toms. The regional OPA levied a fine of \$500 against this processor and made him restore his processing charges to their original basis. Now comes G-93 forcing the processor to charge a great deal more for processing than at the time he was fined \$500. This story could have been placed in the hands of our representatives and senators and given to the press. We have not taken this approach and hope the time never will come that we must work in this manner.

“Let us consider what will happen if G-93 is kept in force and that its interpretation is not changed to being a ceiling on processing charges rather than fixing charges at a rate never heard of before by the turkey industry.

“As stated before, there will be a great deal of farm dressing and dressing in community plants that are not equipped to handle birds properly. This means a handicap to getting turkeys for our armed forces and means a poor quality product when it is obtained. Both servicemen and civilians



will eat poorer quality turkeys and the per cent of total waste will be high.

“Another final result is that the OPA suits against processors—who refuse to charge excessive processing prices—will come to an inglorious end. I personally question the legality of OPA to set minimum or floor prices on processing. These suits will be thrown out of court and OPA ridiculed as the final result. Even if the legal status of the present interpretation of G-93 is [40] sound, you will find it necessary to go a long way to find a judge and jury that would decide in favor of OPA in any of these cases.

“I’m through, now, Haldeman. There will be no more of these letters to you about G-93! You know the story and there is no use repeating it.

“If you want to settle this matter, wire or phone the Pacific Regional Office urging strongly that they either revoke G-93 or interpret it only as a ceiling on processing charges—not a floor.

“You are quite right in your contention that regional offices should be given authority to make decisions. However, in cases like this when the authority to make decisions is being used to protect the vanity—or poor judgment—of one person and to the hardship of everyone else, it would seem only logical for the National Office of Price Administration to make the decision in the best interests of justice.”

Now there have been some changes made, haven’t there, Miss Gallagher, lately?

Miss Gallagher: Yes, there was an amendment.

Mr. Skulason: To ameliorate this thing and they are receding from this position, I think.

Miss Gallagher: That, your Honor, is probably a very good statement of the attitude of scores of growers and processors.

The Court: As Henry McGinn used to say, who wrote this letter?

Mr. Skulason: I don't know the man but it is a good letter. [41]

The Court: He always wanted to know who wrote it for the man that signed it.

Mr. Skulason: Yes. I remember.

Miss Gallagher: However, I still maintain, your Honor, that all of this information should probably be coming in, as well as an argument against the testing of the validity of the regulation in the Federal Court, under the action that has been filed by Mr. Skulason, not under our petition for an order. What we need is an order from you to inspect and copy the records, from which we can get the information that we need. Then we could bring an injunction suit in order to ask him to be enjoined. Even then the validity of the regulation would have to be submitted to the Emergency Court, in our opinion, and I think under the decisions that have been handed down by the Supreme Court and a good many District Courts, it may be that this whole question can be ironed out before we have to bring a lawsuit, but we are in the spot of being clear up into the turkey season, just as we were—this is a

plainful subject, I am afraid—last year into the middle of the berry season. At that time we were able to get a little bit of information. So far in this situation we have no information on which to base the proper kind of a lawsuit. If we have an order and can get it, then we can go ahead and bring the matter to a head and get it contested in some way.

Mr. Skulason: You Honor, may I suggest that my clients are amply able to respond to any loss or anything, for damages or [42] any fine that may be levied later. They are not going to get away.

Miss Gallagher: There is no questions of damages at all, Mr. Skulason.

Mr. Skulason: Well, if they are violating any order they are here and they will respond. The thing is to take the brakes off here and let us go on with business.

The Court: The first thing is to find out what the amendment in the spring by Congress meant. The Supreme Court upheld last winter or spring the provision in the original Price Control Act that withdrew jurisdiction from federal District Courts, of all attacks as to the validity of price regulation. Now then, if that is still the law I can go no further as to your case, Mr. Skulason.

Mr. Skulason: I supposed the amendment was intended to meet that very situation.

The Court: Yes.

Miss Gallagher: The exclusive jurisdiction, your Honor, is still by the amended Act granted to the

Emergency Court of Appeals, in the same language it was before.

The Court: The old language is in there?

Miss Gallagher: The old language is still in there.

The Court: Where did I get the strange idea that Congress had, in response to objections throughout the country——

Miss Gallagher: Had granted to you——[43]

The Court: Not to me——

Miss Gallagher: I don't mean to you——

The Court: ——but to courts generally, the jurisdiction that had been withdrawn? Where did I get that idea?

Miss Gallagher: There was a good deal of talk about it, a good deal of thought on the part of many people that Congress would amend the Act to that effect, and a lot of argument in Congress about it. The ultimate effect of the new Act is—the language is the same. I am quoting from memory on that. I would be terribly embarrassed to find out I was mistaken. I don't have the amendment before me to quote.

Mr. Skulason: When was it amended?

Miss Gallagher: June 30th, 1944. But the 2 (m) I have read, and read carefully, and have read the Congressional debate on it—not the debate but the report.

The Court: What has been your bulletin from the service?

Miss Gallagher: Oh, our bulletins are clearly to the effect that, without any exception at all, the

test of the validity of a regulation is in the hands of the Emergency Court and no place else, under the new Act and under the old Act.

The Court: Has there been any claim to the contrary by anyone?

Miss Gallagher: No claim to the contrary?

The Court: No claim to the contrary made anywhere?

Miss Gallagher: No, there has not been, except in an instance like this, perhaps, brought up in other districts; I don't know; [44] but upon the issuance of the new Act the language was analyzed in full and we get a weekly analysis of all the court decisions all over the United States.

The Court: Has a case like Mr. Skulason's been brought elsewhere?

Miss Gallagher: Not under 2 (m); not under the section he is claiming. If so, I have had no notice of it.

The Court: Has there been any brought elsewhere claiming Congress has restored jurisdiction to the circuit courts as to validity?

Miss Gallagher: No, sir, not as far as I know.

The Court: Do you have any on that?

Mr. Skulason: I haven't had time to run it down. I expected the Court would allow some time for a little further briefing on this, I have been so crowded with these other things, but I am going largely on the opinion of that Mr. Diggs, who, it appears, is a high-class lawyer, and he writes, and I have his letters here, there is no question about the



jurisdiction under that 2 (m). That is his opinion.

The Court: Is he a prominent lawyer in Washington?

Mr. Skulason: Yes, your Honor. I am told he is.

The Court: Could you read us that part of his letter?

Mr. Skulason: Yes, your Honor. I will read it.

The Court: How do you spell his name?

Mr. Skulason: D-i-g-g-s; and this is actually written by [45] an associate of his, I see now, by the name of Cisco, Byron R. Cisco, and there are several wires here also about this thing.

The Court: Well, you know what I want.

Mr. Skulason: Yes.

The Court: If in the profession there has been a claim from responsible quarters made as to what Congress intended by what it did, I want to know it.

Mr. Skulason: He wrote to Mr. Norton on the 23rd of August, to begin with: "Mr. Diggs"—this is Cisco who signed it—"Mr. Diggs has told me of his long-distance conversation with you on yesterday, and the discussion which related to your rights and remedies in connection with the proposed action by OPA officials." That was when he was notified to disclose his accounts.

"The Emergency Price Control Act of 1942, under which the OPA is operating, was amended recently, and I call your attention to the amendment of Section 2 of the Emergency Price Control Act of 1942, Sub-section (m)", and then he quotes it.

"In my opinion, the Office of Price Administration is without power to issue regulations or orders



unless the same are of general applicability and effect. There is a very serious question in my mind whether or not authority may be delegated to zone or local district offices to issue regulations affecting solely certain communities and having no effect other than in the particular community for which it may be provided.

“As I understand your problem, the attempt by the [46] district office in San Francisco to promulgate its local Order G-93, applicable only to that particular zone or area, would be to require the handling of poultry on a loose basis rather than upon a kill-and-haul basis”—on the poundage basis. “Here again, we are of the opinion that the OPA is without power or authority to effect a change in your customary method of doing business, established many long years ago and carried on continuously in this manner up to the present time.”

There is a specific statute on that.

“If we also understand the situation, their main reason for enunciating this policy would be to preclude processors like yourself from returning to the grower a price in excess of what had been determined as a ceiling upon that particular commodity. As a matter of fact, we know, and it is a matter of general knowledge, that the cooperatives return to their members an amount in excess of that which might be received through your method, but still no effort is made to compel the cooperatives to abide by the full provisions of G-93. Therefore, it is our opinion that said local order is discriminatory, unfair, and unjust.

“If you see fit, you might institute an action in the United States District Court in Portland and secure a declaratory judgment against the OPA, its officers and agents, which would, for once and all time, put an end to such contemplated actions as they have heretofore threatened. [47]

“Mr. Diggs advises that he will meet with you in Chicago on the 9th and 10th of September, but he does not feel that he could stay throughout the entire convention. If you so desire, we shall be glad to prepare a concise brief of the law as we understand it, and have it available for you by that time, and you may go over the entire situation with Mr. Diggs when you will have ample opportunity to discuss all phases of this in person.

“My kindest personal regards, sincerely yours,  
Byron R. Cisco.”

They did meet in Chicago and discuss the entire matter. There is a number of telegrams about this thing along this same line, your Honor.

The Court: Nothing yet about the jurisdictional question.

Mr. Skulason: Well, only what I read you there as to their opinion about jurisdiction under 2 (m).

The Court: That you could get a declaratory judgment?

Mr. Skulason: Yes.

The Court: Now Miss Gallagher, someplace in the last few days I have read in the Advance sheet, no doubt it will be in the Federal Supplements, you know in the blue ones——

Miss Gallagher: Yes.

The Court: —where this question was discussed and where a declaratory judgment was given under—it must have been under 2 (m). Is your point narrower than I have been stating it, Miss Gallagher, that 2 (m) does not give authority to restrain a [48] regulation for invalidity but it gives authority to entertain declaratory proceedings?

Miss Gallagher: 2 (m). May I borrow that, Mr. Skulason?

Mr. Skulason: Yes.

Miss Gallagher: 2 (m) provides by its terms, that “any person may appeal to the District Court for an order or declaratory judgment to determine whether any such action, or failure to act, is in conformity with the provisions hereof, and otherwise lawful.” That gives a wide scope, I think, under this section, for the Court to declare whether or not the action taken, or the action failed to have been taken—not taken—is lawful under the provisions of 2(m). It is my contention that the validity of a regulation is not included in Section 2 (m) as one of those things which may be tried out by the District Court.

The Court: How about the validity of Order G-93 and Order G-3?

Miss Gallagher: The regulation, or orders issued thereunder. They are all, in our contention, subject only to the Emergency Court.

The Court: You know of no court that has been called on to interpret 2 (m)?

Mis Gallagher: No, I don't. I would be interested to look for the case that you mentioned.

The Court: I thought you got literature every day from your legal bureau?

Miss Gallagher: Once a week, your Honor, we get literature. [49]

The Court: Well, once a week. Haven't you had some?

Miss Gallagher: Not unless it came within the last half of last week, when I was out of Portland. Ordinarily if any great big question comes up, any big decision which will affect us generally, we get a teletype report on it.

The Court: Yes.

Miss Gallagher: There have been none of those. Otherwise we get our weekly information and all the decisions that have been issued by the Federal Courts.

The Court: I can't go forward in your case until you are prepared to make a final presentation.

Mr. Skulason: I beg pardon?

The Court: I can't go forward in your case until you are further prepared on this jurisdictional question.

Mr. Skulason: No, your Honor. I think we have all of these things in the Law Library. I did spend an hour over there but I didn't look for that particular point.

The Court: Well, we meet that at the threshold.

Mr. Skulason: Yes, your Honor, that is right; that is, as far as the suit is concerned.

The Court: Yes.

Mr. Skulason: But as far as an order to show

cause is concerned, of course you have jurisdiction.

The Court: Yes.

Mr. Skulason: And you could not grant relief to my client, [50] if that is what you think you should do from this order to show cause, by not having, or requiring us to have the books examined, and we will proceed as best we can under the old regulations and G-93, and then thereafter thresh that out in this lawsuit or proceed in some other appropriate manner.

The Court: I don't think we want to do that, Mr. Skulason. If you think you can prepare yourself fully on the jurisdictional question this afternoon I could hear you at nine o'clock in the morning further on that, you and Miss Gallagher, and if you can satisfy me then that 2 (m) gives me jurisdiction, contrary to the view that Miss Gallagher holds, to pass on the validity of a regulation and an order, then I will find the time right away, this week, as soon as the parties can get ready to go into the merits, and take testimony.

Mr. Skulason: Yes, your Honor.

The Court: And my ruling would be on your case and on what she wants at the same time. On the other hand, if you couldn't persuade me that the Congress intended to revest the courts with the normal jurisdiction, which I have understood from the public press was the intention of Congress, why, then I would have the discretionary matter to deal with as to whether I should let them into your books and records down there, and I am inclined, Mr. Skulason, to think that I should do that, that



I should let them into your books and records, unless I have jurisdiction.

Mr. Skulason: I shall immediately wire to Mr. Diggs at [51] Washington to submit whatever authority he has to me by wire, and also consult the records and books in the Library here.

The Court: Yes. Well, I will put it this way: I don't know whether you can get a response to your wire. It may take some time.

Mr. Skulason: Well, I think I can by wire. I hope to.

Miss Gallagher: Your Honor, this is inconsistent on my part, I know, to suggest——

The Court: Well, that is the woman part of it, Miss Gallagher.

Miss Gallagher: Well, there may be——

The Court: That is what makes the other sex so delightful—one of the many things.

Miss Gallagher: Mr. Skulason may have some difficulty about getting his authorities ready tomorrow morning, and it is equally true of me.

The Court: All right. Let's make the date Wednesday morning at nine o'clock.

Miss Gallagher: I was going also to say, I am due to leave for La Grande to try a case up there the next day.

The Court: Well, how about Friday?

Miss Gallagher: That is agreeable to me.

The Court: All right. Be here Friday.

Mr. Skulason: That is agreeable to me also.



The Court: All right. Our date is for nine o'clock Friday morning. [52]

Mr. Skulason: If we should satisfy your Honor you have jurisdiction, then you will be prepared to hear evidence?

The Court: Yes, right away, as soon as you can prepare it. We will have to sandwich it in with the current calendar.

Miss Gallagher: What do we do with Mr. Abendroth, and Mr. Lenske's situation in that case? Of course, it doesn't involve any of this.

The Court: And it is not an emergency. You are going to La Grande?

Miss Gallagher: I am going to La Grande, yes.

The Court: You can't do everything at once, yourself.

Miss Gallagher: What will we do—let it rest until Friday?

The Court: Oh, we will let it rest.

Miss Gallagher: We do seriously want to get at those records, however, as soon as possible.

The Court: All right.

Miss Gallagher: Thank you, your Honor.

(Thereupon, at 12:17 o'clock P. M., an adjournment herein was taken until Friday, October 6, 1944, 9:00 o'clock A. M.) [53]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

I, Alva W. Person, hereby certify that on Monday, October 2, 1944, I reported in shorthand all of the proceedings had and evidence given in the above entitled matter before the Honorable Claude McColloch, Judge, and the proceedings had and evidence given in said matter was thereafter caused by me to be reduced to typewriting and the foregoing and hereto attached transcript, pages numbered 1 to 53, both inclusive, constitute a full, true and accurate record of all of said oral proceedings had and evidence given upon said hearing on said date.

Dated at Portland, Oregon, this 20th day of October, A. D. 1944.

ALVA W. PERSON

Court Reporter.

[Endorsed]: Filed Nov. 10, 1944. [53½]

In the District Court of the United States  
For the District of Oregon.

Civil No. 2565.

CHESTER BOWLES, Administrator of the Of-  
fice of Price Administration,

Applicant,

vs.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon corporation,  
and C. W. NORTON, President,

Respondent.

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Civil No. 2575.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon corporation,

Plaintiff,

vs.

CHESTER BOWLES, Administrator of the Of-  
fice of Price Administration, and CECELIA  
P. GALLAGHER and FRANZ WAGNER,  
Defendants.

Portland, Oregon, Friday, October 6, 1944.

9:00 o'clock A. M.

Before:

Honorable Claude McColloch, Judge.

**Appearances:**

Miss Cecelia P. Gallagher, Enforcement Attorney, Office of Price Administration, Portland District; Mr. Franz E. Wagner, District Enforcement Attorney, Portland District Office [54] of Price Administration, and Mr. Dunlap W. Cannon, Jr., Litigation Attorney, Region 8, Office of Price Administration, appearing for the Applicant in Civil No. 2565 and for the Defendants in Civil No. 2575.

Messrs. B. G. Skulason and Wilber Henderson, Attorneys for the Respondents in Civil No. 2565 and Attorneys for the Plaintiff in Civil No. 2575.

**PROCEEDINGS.**

The Court: I see you brought up the big guns, Miss Gallagher, militarily and geographically. I was thinking of Portland as up from San Francisco—it is up on the map. And I notice you have an associate, Mr. Skulason.

Mr. Skulason: Yes, your Honor. His name appears on the complaint and he is here.

The Court: I didn't notice that the other day.

Mr. Skulason: Well, it is there.

Mr. Wagner: I have here, your Honor, a motion to dismiss, which we have served this morning, and which I assume the plaintiff will have no objection to having filed, it being a motion to dismiss upon the jurisdictional ground, which is at issue. And I assume also that the plaintiff will waive any formal notice of time of hearing of the motion.

Mr. Skulason: Yes. That is all right.

The Court: It may be filed.

Mr. Wagner: We also have, your Honor, Mr. Cannon here from San Francisco, whom we would like very much to have appear as one [55] of the attorneys of record, if your Honor will permit.

The Court: He may appear.

Mr. Wagner: A third matter, during Miss Gallagher's absence I have written up a brief covering the various points. It is a memorandum covering the various points which we think will help to clarify the matter. Miss Gallagher, of course, knowing much more about the turkey business than the speaker, has expressed her desire to continue with the matter where she left off last Monday and review the points that are raised in the memorandum and continue with the argument.

The Court: Since she is the turkey expert I will ask her if she brought any colored marbles.

Miss Gallagher: No. Should I have?

The Court: If you are going to be in the turkey business you have to have colored marbles. They won't eat otherwise.

Mr. Cannon: Your Honor, before Miss Gallagher starts, so the record will be clear, as I understand it, the motion to dismiss, which was filed on behalf of the defendants today, notice of which motion was waived by counsel for plaintiff, I understand the argument which we make today will be in connection with that particular motion to dismiss, inasmuch as the same questions are involved in that motion as are involved in the other matters



here, namely, the question of whether or not this Court has jurisdiction.

Miss Gallagher: If your Honor please, in the suit brought [56] by the plaintiffs against the defendants here they have asked your Honor to enjoin the defendants from attempting to enforce, or enforcing, the provisions of Regional Orders G-3 and G-93. Also they have asked your Honor to restrain the defendants from making an inspection of records, as has been requested formerly.

In May of 1944 the Regional Administrator of the Office of Price Administration for Region 8 in San Francisco duly issued Order G-93, which was published in the Federal Register. It was issued pursuant to Section 1499.18 (c) of the General Maximum Price Regulation on August 30th, 1944. The Regional Administrator, pursuant to Section 1429.14 (e) of Revised Maximum Price Regulation 269 issued Regional Order G-3. That order defines wholesalers and processors of turkeys. These two orders are the ones involved in the suit filed by the plaintiff.

In support of our motion for a dismissal of the complaint we offer these authorities in this argument.

The Emergency Price Control Act as it was originally passed by Congress in 1942, and as it was amended and extended by the Stabilization Act in 1944, provides, in Section 204 (d):

“The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have ex-

clusive jurisdiction to determine the validity of any regulation or order issued under Section 2, of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, [57] order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.”

The language that has just been quoted is still contained in the amended Act of June, 1944, and has not been changed.

The question of the exclusive jurisdiction has been passed upon by the United States Supreme Court in the case of *Lockerty v. Phillips*, 319 U. S. 182, decided in May of 1943. The Court sustained the action of the lower court in dismissing the complaint. The Court then said:

“By this statute,” referring to 204, “Congress has seen fit to confer on the Emergency Court (and on the Supreme Court upon review of decisions of the Emergency Court) equity jurisdiction to restrain the enforcement of price orders under the Emergency Price Control Act. At the same time it has withdrawn that jurisdiction from every other Federal and State Court. There is nothing in the

Constitution which requires Congress to confer equity jurisdiction on any particular inferior Federal Court."

The Lockerty case was cited and reaffirmed by the Supreme [58] Court in the case of Yakus v. United States in March, 1944, found in 321 U. S. 414. There have been a good many other cases, both in the Federal District Courts and a few in the Circuit Courts of Appeal, which follow the reasoning in Lockerty v. Phillips and Yakus v. United States. Some of these cases are Bowles v. Rock, in the District Court of Nebraska, decided on July 7th, 1944, the Consolidated Water and Paper Company v. Bowles, in the District Court of the District of Columbia, decided on July 5th, 1944; Henderson v. Thomas Stores, 48 Fed. Supp. 25; Henderson v. Kimmel, 47 Fed. Supp. 635; and Diefenbaugh v. Cook, 47 Fed. Supp. 645.

Our own Circuit Court of Appeals for the Ninth Circuit has passed upon this question in two cases.

In the case of Rosenweig, et al, v. United States, decided June 3rd, 1944, it was urged that the Maximum Price Regulation 169 was unenforceable because it had failed to bear, according to the contention of the plaintiffs, the signature of the Secretary of Agriculture. The Court, speaking through Judge Denman, said:

"It may or may not have been approved, but that is not here pertinent for we are of the opinion that appellants' claim that the regulation did not become enforceable is not more than a claim that the regulation is invalid.

“Appellants do not claim that they have at any time invoked the jurisdiction of the Emergency Court of Appeals provided [59] in Section 203 (c) and (d) of the Act, or that the Court has held the regulation to be invalid in any previous proceeding whatever. The District Court and this Circuit Court of Appeals have no jurisdiction to consider the contention that the regulation is invalid.” Citing *Yakus v. United States*.

A second case in which this matter was passed upon by the Ninth Circuit is that of *Taylor v. United States*, 142 Fed. (2d), page 808. This case was decided on April 26th of this year, and it involved a rent regulation. The Court said:

“Then, moreover, it should be noted that we are without jurisdiction to pass upon the validity of Rent Regulation No. 28, in view of the provisions of section 204 of the Act.”

You asked the other day if there have been any recent cases since the amendment of the Act. There is the case of *Bowles v. Nu-Way Laundry Company*, decided in the Tenth Circuit, appealed from the Western District of the District of Oklahoma. This decision was entered on August 28th, 1944, subsequent to the amendment of the Act.

In this case the trial court had held that inasmuch as the plaintiff had sought an injunction, that equity powers of the court had been invoked and by general equitable principles the court was not required to compel the defendant to operate his business at a loss, even though the Court could not

pass upon the validity of the regulation. The Circuit Court overruled the decision of the lower court, followed the cases of *Lockerty v. [60] Phillips* and *Yakus v. United States*, and said:

“In arriving at its conclusion, we think the learned trial court confused the legal and equitable questions involved. Whether the appellee violated any of the applicable price regulations is a legal question which the Court must decide on the facts presented, and equitable considerations do not enter into that question.”

The Court: What page are you reading from?

Miss Gallagher: I am reading from page 5, your Honor. “Any equitable jurisdiction to test the validity of a regulation or the fairness of a price schedule, established thereby, is exclusively committed to a single court created by the Act (Section 204(e) and specifically authorized, subject to review by the Supreme Court, to adjudge the validity of any regulation, order, or price schedule, and to set aside or annul the same.”

They also cite *Bowles v. Willingham*.

The Court: The controlling date would be the date when the District Court acted.

Miss Gallagher: Oh. I don't have the date of the District Court action. It was November 4, 1943, I think, the District Court passed upon the matter.

Those, your Honor, are the cases of first importance, although the books are replete with many other cases decided by other Federal District Courts passing upon the question of whether the Federal



District Courts have jurisdiction to pass [61] upon the validity of a regulation or order.

It is our contention that the Act itself vests in very clear language jurisdiction in the Emergency Court of Appeals, that the Act was not amended so as to change that jurisdiction, and that the cases passed upon all down the line have upheld our contention.

Mr. Cannon is prepared to discuss the provisions under 2 (m) which were raised by Mr. Skulason and under which he claims the Court here has jurisdiction.

The Court: Let me hear the other side, then you close, Mr. Cannon.

Mr. Henderson: May it please the Court, everything that has been said by counsel up to date, having been addressed to the Court prior to the 30th of June this year——

The Court: Was that when the President signed the law?

Mr. Henderson: That is when it became effective, I believe; it is dated that way, in any event—would have been pertinent, the Lockerty case, the Yakus case and all of those cases, but those were the very cases and the things that grew out of them, and the grievances of the people were what provoked this particular amendment.

Now if you were following the debates in Congress about this time during the month of June, participated in, I believe, in the Senate principally by Mr. Taft, of Ohio, who was on the Banking and

Currency, you will remember, or I remember reading [62] in the paper of him stating something about somebody talking about the Emergency Court of Appeals being a kangaroo court. He discussed the Yakus case and what it held, and it was those things, the claim that this Emergency Court of Appeals was a kangaroo court, a court dominated by the Administrator of the Office of Price Administration, that prompted undoubtedly the passing of this law.

Now let's consider a rule of statutory construction. We have a law providing a particular thing, limiting a particular remedy, providing a particular procedure; then we have a legislative body in face of that passing a law bearing directly on that particular subject and directing another cause of action. Now can there be any question under those circumstances, where the matter was before the legislative body, the grievance was before the legislative body, that the Congress knew what it was doing when it passed that law?

If this law here, your Honor, was before your Honor as an original law, and this was in there with this provision as to the exclusive jurisdiction, you would have an entirely different situation as far as the statutory construction. Then you would be able to say, "Well, since this was all written at one time, since it was all written together and they have said at one time the exclusive jurisdiction is in the Emergency Court of Appeals, then I must give weight to that." But you don't have that; you have a law providing that the Emergency Court of

Appeals shall [63] have exclusive jurisdiction; then you have an act of Congress on that particular subject passing a law dealing directly with this particular subject. There can't be any doubt about the language. You can't suppose that these people back there, both in the Senate and the House, didn't know the meaning of the English language when they wrote into this law, this 2 (m), because it is very clear, it is very comprehensive, and it is very direct. There is no equivocation about it at all. It says, "Any person aggrieved by any action." It is not limited—any action. "Any person aggrieved by any action of any agency, department, officer or employee of the Government, contrary to the provisions hereof, or by the failure to act of any such agency, department, officer or employee, may petition the District Court of the District in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action, or failure to act, is in conformity with the provisions hereof, or otherwise lawful, and the court shall have jurisdiction to grant the appropriate relief."

Now, if the Court please, there is a very clear confirmation of authority in this Court to grant whatever relief we are asking for, if we are able to prove what we claim.

There is another thing that was discussed in Congress and another thing that was before Congress at that time. Many of these people were sending in complaints that they wanted to try these cases, they wanted to try out their grievances in a [64]

court where they lived; that is, they wanted to be able to initiate the action in a court where they lived and not have to go back there. I remember someone at the time pointing out about somebody having to come clear across the continent practically to try a case in Boston. These things were before Congress and that was, as I say, all of this thing was in the mind of Congress when they had before it this particular amendment. The Administrator of the Office of Price Administration was ably represented on the floor of both the Senate and the House and in conference on this bill. The hearings on the bill are made up in large part of documents and testimony furnished by the Office of Price Administration and they had Senator Wagner, I believe, champion their position on the floor of the Senate, and I don't recall who upon the floor of the House, but anyway the Administration was well represented and they knew what was being offered for the senators and the House of Representatives to vote upon when this particular language was written in there. As I say, it is not the case like a bill being passed in its entirety, containing conflicting provisions. This is a case where a particular provision is in an Act; Congress meets and in direct opposition to that says, "We are going to grant this particular authority," which I say—which I say, if the Court please—puts the Court in an entirely different situation than if you had it in its original state.

Everything that has been said by counsel so far in this [65] case supports our position—supports

it by inference. It was those things the courts had decided under that Act that provoked Congress to do this particular thing; that is the cause of it; and it was in face of it and with full knowledge of what the court had said, that they passed this particular Act. So upon those decisions—we have a case here pointed out in the Circuit Court of Appeals decided as late as August of this year—the Circuit Court of Appeals. How could the Circuit Court of Appeals do anything but decide the case upon the issues framed in the lower court, and how could it possibly get to the Circuit Court of Appeals between the 30th day of June and the month of August? Obviously that particular case——

The Court: Couldn't in this Circuit.

Mr. Henderson: Well, I understand that this is about the fastest Circuit of them all.

The Court: It takes about a year.

Mr. Henderson: Those people who travel the circuits say it is; so if they could not do it in this Circuit they could not do it in any. So that particular case is just deciding the law as it stood, which we admit.

The Court: That seems clear.

Mr. Henderson: And so we say that is what provoked this amendment.

Now you have before your Honor just one thing, it seems to me. You have some plain, unequivocal language contained in an [66] act passed after the original provision that the Emergency Court of Appeals should have exclusive jurisdiction, you have



Congress saying, "I give to the District Court jurisdiction over any grievance by any person against any officer of the Administration for any act he has performed." The comprehensive word "any" used in any one of these terms — "any person," "any act," "any officer," "any agency."

Now that is clear, and I don't know of any rule—I don't know of any rule and I don't believe they have produced any rule, warning the Court to limit its jurisdiction over a grievance of a citizen of the country. If anything, the Court should be liberal in its construction as to what jurisdiction it should assume. When a person is before a court with a grievance, the court should be very hesitant about saying, "I will refuse to accept jurisdiction over this case. You ought to go back and file your action in Washington, D. C." There ought to be a clear mandate from Congress that you can't take jurisdiction. And I submit, if the Court please, that in view of the fact that this Act was passed and this jurisdiction was conferred after all these cases were decided, and after it was in there that they had exclusive jurisdiction, that Congress meant exactly what it said in that language, that you do have jurisdiction in this case.

Mr. Skulason: May I say just a word, your Honor? I think I said at the last hearing that I would make an effort to find [67] some authority or something bearing upon this question. Now I have made that effort and I have found nothing other than counsel has referred to here. We tried through the office, the local headquarters of Sena-

tor Cordon here to get the Conference Report and it is supposed to be in the mails but it has not arrived yet, and that might throw some light on the question of what Congress thought they were considering at the time.

I want to say this, too, because this is all I am going to say now. I have glanced through what remains of the brief that counsel for the defendants was reading from, remarks made by members of Congress there. Your Honor will note not one of them hits this point. They refer to other features of the amendment. So, as Mr. Henderson has said, here is a clear mandate, an act passed to cure a situation that had become intolerable, people being required to go back to Washington, and the whole argument is that we should proceed under the Old Act, that the protests should have been filed within the Act itself, and then relief sought in the Emergency Court of Appeals, and that is the very thing that we think Congress had in mind when it passed this amendment.

Mr. Cannon: May it please the Court, the complaint which was filed in this matter, entitled a complaint in equity, in Paragraph III of that complaint stated that "Jurisdiction of this action is conferred upon this Court by Section 2 (m) of the Emergency Price Control Act of 1942 as amended." The prayer of that complaint [68] asks that this Court declare certain orders issued pursuant to the Price Control Act invalid and pending the determination of the validity of said orders that the defendants and each of them be restrained from en-

forcing, or attempting to enforce, said orders, or from interfering with the plaintiff's business in any manner, and particularly from proceeding further in said show cause matter.

Thirdly, permanently enjoining and restraining the defendants, and each of them, from enforcing or attempting to enforce any of said orders in any manner, and from interfering or attempting to interfere with the plaintiff's said business.

Now again, so that the record may be clear, I understand that today our motion to dismiss, which has been filed and which counsel has agreed could be heard at this time, is being argued in connection also with whether or not your Honor should issue a restraining order, restraining the defendants from enforcing, or attempting to enforce, the orders in question here.

Now it is our position that of necessity, by virtue of the complaint herein, unless Section 2 (m) of the Emergency Price Control Act gives your Honor jurisdiction, that our motion to dismiss should be granted. Consequently it seems to me of primary importance that we carefully analyze Section 2 (m), not one sentence thereof or two sentences but the entire section, to ascertain therefrom as best we can what the congressional intent actually was. [69]

Section 2(m) reads in its entirety, "No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities" — that is the first

thing, no agency, department, officer, and so forth, "in the payment of sums authorized by this Act relating to the production or sale of agricultural commodities," so I take it there is no question here that there is no dispute involving any payment of any sums authorized by the Government. Secondly, "or in contracts for the purchase of any such commodities by the Government or any department or agency thereof." Likewise, there is no question here of any contract or purchase of any commodities by the Government.

Thirdly, "or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities." Likewise there is no question here of the allocation of materials or facilities for the sale of any commodity.

Now going back over these things again, we find section (m) itself relates to the payment of sums of money authorized by the Government, contracts with the Government, and allocations for materials or facilities. After that the section continues:

"—shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or [70] quotas for the production or sale of any such commodities are imposed."

Now reading that much of the Act it seems perfectly clear from that much of Section 2 (m) that it relates entirely to the imposition of conditions or penalties not authorized by the particular acts in



connection with the three things, payment of sums by the Government, contracts for the purchase of certain commodities, and allocations of certain materials.

Now the section continues: "Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof,"—Now counsel, as I understand it, relies entirely upon that particular wording in Section 2 (m). It seems to me perfectly obvious from reading that sentence in the light of the whole section that it refers, by saying "contrary to the provisions hereof," to a situation where there has been an unlawful imposition of certain conditions or penalties in connection with acts of course relating to the three things which we have enumerated, namely, payment of sums of money, Government contracts, and allocations.

Now as a matter of fact I think it is extremely important to clear up one situation, namely, that insofar as Congress' consideration of the Price Control Act was concerned Congress considered very carefully the entire Price Control Act. The committee hearing went on for months and months, as I know of my own personal knowledge. The section which refers to exclusive [71] jurisdiction was discussed at great length. The Act itself was renewed in its entirety, with certain amendments and—

The Court: Had its time run out?

Mr. Cannon: Yes, your Honor. The Act expired on June 30th of this year and one of the amend-



ments was the Act of June 30th, 1944. There is not any point in quoting just the amendment to the Act but the whole Act itself was re-enacted, with certain amendments, and I think it is a very clear rule of judicial construction that where possible sections of a particular act are presumed to be consistent with one another and to be construed as such.

Now speaking of the clear wording of the statute——

The Court: What is the connection between the Stabilization Act and the Price Control Act?

Mr. Cannon: Well, your Honor, the Stabilization Extension Act—to go back just a little bit, the Price Control Act of 1942 was amended in the fall, I believe, of last year; the year before by the Stabilization Act; and in actually re-enacting the Price Control Act it is provided that it can be cited, the amendments can be cited as the Stabilization Extension Act of 1942 as amended June 30th, 1944. In actuality certain of the amendments to the Stabilization Act of 1942 have no application to the particular problems we are concerned with here, except as related to Section 2 (m), which of course was made a part, in effect, of the Emergency Price Control Act. [72]

Now I feel of necessity that the entire Act would have to be read as one act, and in doing that it seems to me, in the first place, perfectly clear from the language of Section 2 (m) that your Honor has no jurisdiction. I can't see how possibly you could construe a sentence, which says any person aggrieved by actions "contrary to the provisions

hereof," and we know what the "provisions hereof" are, because of necessity you must read the section to find out what the provisions are, and the provisions are very unmistakably set forth in that particular section—in my opinion, that section alone would be enough to justify, or, rather, require your Honor to dismiss the complaint. But further than that, the section which Miss Gallagher has read to your Honor, section 204 (d), which, bear in mind, was re-enacted on June 30th and is now just as much a part of the Price Control Act as section 204, provides in unmistakable language that, "Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders."

Now there again it seems to me perfectly clear, from the very plain language of the statute, that Congress intended to, and did, keep in the Price Control Act the exclusive jurisdiction prevailing; and I think it is not without significance that in the more than three months which have elapsed since the amendment [73] to the Price Control Act that the Emergency Court of Appeals has functioned just as it has in the past. It recently was on the Pacific Coast, in Portland, in San Francisco, in Los Angeles, hearing cases. There has never been another case in the United States in which the courts—well, there has never been a case, of course,

in which the courts—they have taken jurisdiction under this sort of suit under Section 2 (m), but further than that there has never been a suit in the United States in which the plaintiff has attempted to evade the exclusive jurisdictional section by coming into court under Section 2(m), and I feel, your Honor, that insofar as the complaint itself is concerned, and the reliance on Section 2 (m) for jurisdiction, on the face of it it must fail.

Now one other thing I would like to touch on, and that is in connection with when actions may be stayed. There is a section in the Act, and this is an amendment and I know counsel for the plaintiff will be glad to know this is an amendment; it is section 204 (e), and that section is a rather lengthy section. I will read only certain parts which I believe applicable. That relates to the situations in which the District Court have authority to stay proceedings which are instituted pursuant to the Price Control Act.

The first, which is not applicable here, is in connection with criminal cases and provides that “within thirty days after arraignment,” and so forth, that the court may stay proceedings [74] if the defendant has made application—where? Made application to the Emergency Court of Appeals to protest the regulation because in the amendment it says if the defendant had made application to the Emergency Court of Appeals it was possible the defendant could actually protest the regulation before the District Court. It provides there in regard

to criminal cases that stays may be granted under certain conditions.

Now as to civil cases it provides in there that in any action brought under section—I don't want to read the whole thing. Well, "Notwithstanding the provisions of this paragraph"—I will read this—"stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment." In other words, in all civil cases which are instituted pursuant to certain sections of the Act that the stays shall be granted by the Court only within five days after judgment.

Now bear in mind, I think that section has no application whatsoever to this case other than to affirm and to indicate even more clearly to me, and I believe to your Honor, that Congress clearly intended that the exclusive jurisdiction provision, which was in our opinion an integral portion of the Price Control Act, should remain in effect, as particularly they re-enact it. And going back one moment more to Section 2 (m), it seems to me that if we read Section 2(m), as of necessity we must—and I do think this, that the Congressional Committee reports in which the [75] comments of the members of the Congress are significant—they are set forth in our brief—some of the statements that were made and some of the statements that actually appear in the committee report—I think it is apropos that I might refer to one or two of those. One is a quotation at page 9, of the Senate Banking and Currency Committee, reads as follows:



“The attention of the committee”—of the Senate Banking and Currency Committee—“has been directed to instances of the flagrant misuse of authority for the imposition of conditions or penalties totally unrelated to the purposes for which the authority was granted, as for example, the withholding from a farmer of a supplemental gasoline ration because of his failure to participate in a program of the War Food Administration. In instances where such things do occur, this amendment will afford an opportunity to obtain relief from the courts.”

On the floor of the Senate Senator Wagner said, in explaining the amendment:

“The complaint has been made that other penalties were imposed in some of these actions. Actually there was no evidence before our Committee, but there was a statement that some of these other requirements had been imposed, and this would make the entire question certain.”

Senator Taft said:

“Perhaps I can give an example of what the Committee was trying to reach, through citing an order issued by the War Food [76] Administration as to dairy products. They provide for various milk arrangements, pools, and other things, under the War Food Administration. This amendment does not relate particularly to the Price Administration. The Price Administrator had no objection, because he said he was not using other penalties anyway. It has more to do with the question of the War Food Administrator's actions. In other words,”



and this is Senator Taft's own words, "the purpose of the amendment is to prevent the enforcement of one Act by threatening penalties under another Act. The War Food Administrator could proceed under the statute which regulates him, but he would have to confine himself to the penalties provided in the Act. He could not call on the Price Administrator and say, 'Go after this fellow and take his license away for something he did in violation of our Act,' and threaten him with that action as a result of his alleged violation of the War Food Administration Act."

Now it seems to me, in view of the plain language, and in view of the explanation of that section, that there should be no question whatsoever that there was any intention on the part of Congress by that section to give the District Courts jurisdiction to pass upon the validity of price regulations in cases.

Now counsel has just mentioned the fact that none of these quotations from the brief actually go to the point he raises. My answer to that is they could not conceivably, because the point he raises has nothing to do with the section, and [77] certainly the discussion on the floor of the House, and the words that I have just quoted make perfectly clear that they refer to the amendment as a whole, and as such, and not to any particular portion thereof. So consequently, your Honor, I respectfully submit that upon a careful reading of the entire Price Control Act, first reading Section 2 (m), then reading the exclusive jurisdictional section,

the section that relates to stays, that backed up with the clear legislative history, should lead your Honor to but one conclusion—that there is no jurisdiction to entertain the complaint in equity which has been filed herein, entitled Northwest Poultry and Dairy Products Company, an Oregon corporation, vs. Chester Bowles, Cecelia P. Gallagher and Franz Wagner. Consequently our motion to dismiss the complaint should be granted, and naturally any restraining orders will be denied.

Mr. Henderson: If the Court please, may I just say a word on that matter?

The Court: Yes.

Mr. Henderson: Counsel has emphasized the fact that “the provisions hereof” refer to section (m), the preceding part of section (m), although it is an entirely different sentence and is much broader than the language would indicate.

Now to show the particularity with which Congress dealt when it was referring to sections and to subsections in this act, I just glanced through here and I want to point out how careful they were when they were referring to a particular section, in [78] confining the meaning to that particular section.

Notice here on what would be (c) of Section 2 this language: “he may without regard to the foregoing provisions of this subsection,” down to (c), “any regulation or order under this section”; under (e), “of this section.”

Now coming over on the next page, “nothing in this section shall be,” and so on.

Then under (f), "No power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of section 3."

"the powers granted in this section," is the language in (h).

And then (k), immediately before—no, in (l) immediately before (m), that "in no case shall this subsection require."

Now you see Congress in writing this Act in all other cases when they were confining it to the particular section or subsection used that specific language, showing that they meant to confine the language to exactly that.

Now here is the conclusion of the Act. It is not made separate from (m). It might be. Parts of this, it seems to me, could very well be separated; I mean other parts of the Act; but I think Congress having used specific language, language sufficiently comprehensive to give this jurisdiction, you should not rely upon the inference deduced from the fact that the words "the provisions hereof" are used, in view of the fact throughout the rest [79] of the Act when Congress was referring to a section or a particular subsection they used that language.

Mr. Skulason: May I make one more remark, your Honor.

Regarding this point that the authority of the Court is restricted to matters it mentions specifically in section (m), there appears on page 8 of the memorandum served on us, which of course we never saw until this morning, a quotation from an

opinion by Thomas I. Emerson, Attorney and Deputy Administrator for Enforcement, and so forth, relating to section (m), and there are two portions of that opinion that might be considered somewhat contradictory. I will call attention to both of them.

First, "Section 2 (m) does not apply so as to allow declaratory judgment review of the suspension orders." Of course that is not what this is. "Our position is that the exclusive method for court review of suspension orders is the injunctive review provided by section 205 (g)."

But lower down he quotes from this subsection (m):

"The language used, 'to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful,' " underscoring those words, "'is broad enough to permit the raising of every issue of validity, both under the statute and the Constitution'."

He took our view there. By "under the statute" it seems to me he means the entire statute, not just (m). So I think if that is taken as a valid and good opinion that disposes of that [80] point.

(Mr. Wagner here stood.)

The Court: It is time to quit now. I have to take up other matters. I will hear you, though. You haven't spoken.

Mr. Wagner: Yes. I have just one or two remarks to make, your Honor, in connection with 2 (m), in reply to Mr. Henderson's remarks.



It seems very important to me that Section 2 (m) makes absolutely no mention of any language that would indicate the intent of that section to repeal or modify any other section of the Act as it existed from the pre-existing Act. Clearly the two sections, the exclusive jurisdiction section and Section 2 (m), if read or interpreted as counsel contends, would be entirely inconsistent. It seems to me that that is a very important thing to note.

The Court: Well, that happens all the time, Mr. Wagner. That is not unusual in modern legislation. That is why probably seventy-five percent of the cases the courts deal with are in statutory construction.

Mr. Wagner: Well, to me it seemed quite important. In connection with Mr. Skulason's remarks the words "otherwise lawful," as contained in Section 2(m) clearly pertain to the penalties or conditions and the imposition of those conditions or penalties in four particular situations, or the three particular situations that we have enumerated here in the memorandum the other day. [81] "Unlawful" clearly indicates that those conditions or penalties are the ones that are being referred to, and are the only ones to be considered in the jurisdiction that is conferred in Section 2 (m).

The Court: I won't undertake to pass on the jurisdictional question now, but reserving that question I will hear you on your grievances at 1:30, if you are ready to present testimony at 1:30, reserving the jurisdictional question.



Mr. Skulason: Yes, your Honor. We will be ready at 1:30.

The Court: I want to ask you a question, Mr. Cannon. Look at page 8 of the brief, in Mr. Emerson's opinion.

Mr. Cannon: Yes.

The Court: Pretty well up there: "Our position is that the exclusive method for court review of suspension orders is the injunctive review provided by section 205 (g)."

Mr. Cannon: Yes. That is suspension.

The Court: You cited 205 (e) a while ago.

Mr. Cannon: 205 (g) has nothing to do with this.

The Court: Did you cite 205 (e) a while ago?

Mr. Cannon: No, your Honor. The section I referred to——

The Court: Were you talking about this (g)?

Mr. Cannon: I was talking about 204 (e).

The Court: 204 (e)?

Mr. Cannon: Yes, 204 (e). That was in connection with the situations in which stays can be granted. [82]

The Court: Yes. This is something else again?

Mr. Cannon: Yes. That has nothing to do with this situation. 205 (g) deals with suspension orders which are not involved here.

The Court: I thought 204 (e) also deals with suspension orders.

Mr. Cannon: No, your Honor. 204 (e) only deals with situations in which stays can be granted in similar criminal cases.

The Court: Is 205 (g) a new amendment?

Mr. Wagner: Your Honor, that is the one that was involved in the Cain case, which Mr. Snow, Mr. Cannon and myself presented.

The Court: Wait. That doesn't mean anything to me. All I want to know is, is 205 (g) new legislation?

Mr. Cannon: That is correct, your Honor.

The Court: That is, there were several amendments in June of this year which relaxed the prior rigid rule that the Federal District Courts had no jurisdiction?

Mr. Cannon: Absolutely not, your Honor. In my opinion 205 (g), as such, made it even—imposed more rigid requirements than heretofore. That is perfectly clear by our admission in the Supreme Court case of Bowles vs. Stewart, that the District Courts had jurisdiction anyway to review the validity of suspension orders. That is an entirely different problem than in this case.

The Court: You never claimed that was covered by the part of the Act that created the Emergency Court of Appeals.

Mr. Cannon: Your Honor, it was not covered by the Act, but we always admitted the District Courts had jurisdiction to pass upon [83] the validity of suspension orders, once the administrative remedy had been exhausted, and section 205 (g), in our opinion, does nothing more than to put specifically in the Act that which we had already admitted as a fact, and the Supreme Court in the Stewart case points out that the Administrator ad-

mits even before it did have jurisdiction in that case.

The Court: All right. 1:30.

(Thereupon, at 10:03 o'clock A. M., a recess herein was taken until 1:30 o'clock P. M. of this day, Friday, October 6, 1944, at which time Court reconvened and the following further proceedings were had herein:)

Mr. Cannon: May it please the Court, your Honor, before the proceedings starts, for the purposes of the record, in the case of Northwest Poultry and Dairy Products Company against Chester Bowles, Cecelia P. Gallagher and Franz Wagner, Civil No. 2575, I respectfully request that a certain portion of our brief, namely, the portion on page 8, beginning with the reference to a memorandum of Thomas I. Emerson be deleted from the memorandum, inasmuch as it was put in through mistake as to its effectiveness. I feel it is unfair for us to attempt to rely on what purports to be an individual opinion of Thomas I. Emerson in regard to a particular section. That is not an official interpretation, and does not purport to be, of the regulation. The remarks in there are only [84] a portion of a large discussion which related to confidential matter between Office of Price Administration attorneys the week after the new amendments came into effect, and so, consequently, I wanted to explain that to the Court precisely, that we do not rely on that language of Mr. Emerson's memorandum and re-

quest that it be withdrawn for the purpose of the record from our memorandum.

The Court: Call a witness, Mr. Skulason.

Mr. Cannon: Your Honor, I might say one other thing—excuse me for interrupting, please. As I understand it, also for the purpose of the record, the hearing this afternoon is for the purpose of taking testimony and hearing arguments on the validity or invalidity of the various orders in question here. I take it that is correct, is it not? And in that regard, before the beginning of the proceedings I want to state our position for the record, namely, that we feel that clearly under the provisions of the Price Control Act which were discussed this morning the Court has no jurisdiction to consider the validity or the invalidity of the particular orders; consequently, further than that, as to whether those orders are in themselves valid or invalid would depend to some extent as to whether or not they were generally fair and equitable, so to speak, insofar as a number of people are concerned, and would raise many, many problems, which I am not qualified or prepared to argue in this particular case, and I have discussed this matter carefully with our National Director of Litigation and we are taking the position that the exclusive jurisdiction [85] provision is here applicable, and, consequently, we will not offer any evidence whatsoever as to the validity of the orders in question.

Now I might say this, too, so that there can be no misunderstanding. It certainly is our position

that the orders are, as such, valid; were issued after due consideration by the people who did issue them; the statements of considerations in connection therewith indicate that they were given careful consideration; that members of the trade were consulted and that the whole purpose of these orders was to alleviate a shortage condition and to make the prices more fair and equitable. However, with that statement I rest our position in this matter entirely on the fact that this Court has no jurisdiction to pass upon the validity of the order.

Mr. Skulason: Mr. Norton, please.

C. W. NORTON

was thereupon produced as a witness in behalf of Respondents in Civil No. 2565 and the Plaintiff in Civil No. 2575 and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Skulason:

Q. Will you state your name, please?

A. C. W. Norton.

Q. Where do you reside?

A. Portland, Oregon.

Q. How long have you lived here?

A. Since 1932. [86]

Q. And what is your connection with the Northwest Poultry and Dairy Products Company?

A. I am the president and general manager.

Q. How long have you been so connected?



(Testimony of C. W. Norton.)

A. Ever since I came to Portland, twelve years—twelve years the first of June.

Q. How long has that corporation been operating here? A. It started in 1929.

Q. And where is its place of business in Portland? A. On 3rd and East Oak.

Q. What sort of a plant have you there?

A. We have a four-story and full basement concrete building that takes in approximately a quarter of a block.

Q. Have you branches?

A. Yes, sir. We have six branches in the country, six country branches.

Q. Tell us where they are, please.

Mr. Cannon: Excuse me. Your Honor, for the purpose of the record, I object to these questions, and particularly that question, as being incompetent, irrelevant and immaterial. And also may it be deemed, counsel, so I won't have to continually object——

Mr. Skulason: Certainly.

Mr. Cannon: —that all the questions you ask are being asked subject to that objection?

Mr. Skulason: That will be entirely satisfactory. [87]

The Court: The answers are taken subject to the objection.

A. We have plants in Salem, Albany, Eugene, Roseburg, Redmond and McMinnville, in addition to the Portland plant.

Q. You handle turkeys?

(Testimony of C. W. Norton.)

A. Yes. We handle turkeys as one of our main endeavors.

Q. You have been handling turkeys for some years past?

A. Approximately thirty years. I was with the Heningsen organization about fifteen years and with the present company about that same length of time.

Q. So you were in that same business before the passage of the Emergency Price Control Act?

A. Yes, I was.

Q. About the volume of your turkey business, Mr. Norton, per year, what can you tell us?

A. The volume of turkeys in Oregon has grown, and of course our volume has grown with it. In 1932 the volume was approximately \$1,100,000.00. That was the size of the crop. The volume has been increasing about a million dollars a year. At the present time it amounts to \$14,000,000.00. Out of that ordinarily we will handle about \$4,000,000.00. That is based on last year—\$4,000,000.00 of turkeys to about \$4,000,000.00 of allied products, feed and eggs, and so forth.

Q. That will be the amount handled by your main plant and the branches?

A. That is correct. [88]

Q. In pounds can you tell the Court what the volume of the business is?

A. In the State of Oregon the poundage is approximately 35,000,000. In the United States it is approximately 540,000,000.

(Testimony of C. W. Norton.)

Q. And what portion of the business in pounds do you handle in Oregon?

A. Close onto a third normally.

Q. How long have you been handling approximately that quantity?

A. Well, as I say, it has been increasing as the turkey volume increased in the state.

Q. About a million pounds a year or——

A. About a million dollars a year it has been increasing and we handle our share of it.

Q. Are there other people or concerns in this state handling turkeys on the same basis as you handle them?

A. Yes. There are several large firms here in the state that handle on the same basis which we do.

Q. Is the business being handled by cooperatives at all?

A. Yes. There is one—in fact, there are three cooperatives in the state. They are all under one head; that is, their combined sales organization is under one head.

Q. What is the name of that?

A. One sales organization? That is the Northwestern Turkey Growers Association.

Q. Their headquarters? [89]

A. Salt Lake City.

Q. About what proportion in pounds do the cooperatives handle here?

A. My understanding is that they handle in the neighborhood of four million pounds.

(Testimony of C. W. Norton.)

Q. And reducing that to dollars, what would that come to?

A. Well, on the present basis it would be about \$1,600,000.00.

Q. Now have you been familiar, Mr. Norton, with the manner in which this turkey business has been conducted by your concern and others in the same line in this state for several years last past?

A. Yes.

Q. I mean as to practice, business practices and cost practices and methods, you are familiar, are you?

A. Yes, I am.

Q. You claim to be a wholesaler and processor and purchaser of turkeys?

A. Yes. We operate right through from the grower to the consumer or to the wholesaler.

Q. Now will you please explain to us what the custom of handling turkeys has been here for many years, and was before this Act that I mentioned came into operation.

A. Well, in 1932 the majority of the turkeys, as I say, there was only one million one hundred thousand pounds, or one million one hundred thousand dollars produced, and the majority of the turkeys in that year were dressed by the growers. They were used for home consumption, or nearby, and the growers at the holiday season [90] would dress their own birds and bring them in, and as the volume increased the customary practice became for the dealer-processor, wholesaler-processor to put in country plants and process the turkeys

(Testimony of C. W. Norton.)

for the growers, and since 1934 fully ninety percent or more of the turkeys that have been killed and processed have been in processing plants. The processing plants, incidentally, are owned by the wholesalers in this district, either in Oregon or Washington in this particular territory.

Q. Yes. Now in this Order G-93 that we are attacking here there is a provision for the charges on a kill-and-haul basis, you recall. State what the custom in the trade was with reference to that feature.

A. The custom ever since the processors and wholesalers started to dressing turkeys has been to buy the turkeys from the growers on the dressed weight and grade, and charging the growers for the service, picking and/or hauling, whichever the case may be, or both. If the grower hauled his own turkeys in you wouldn't charge him for the hauling. If you hauled them in for him, you would charge him both for the hauling and dressing.

Q. Was that on a per head basis?

A. The hauling and dressing was all on a per head basis.

Q. Now was that the only basis on which turkeys were being handled before this Act and these regulations came into effect?

A. That is the only one that turkeys have ever been handled on in Oregon since they have been processed. [91]

Q. The per head basis?

A. The per head basis.



(Testimony of C. W. Norton.)

Q. And what was the charge in the trade for that?

A. Well, formerly it was as low as 18 to 20 cents, but at the time that the OPA regulations came in we were charging 23 on hens and 25 on toms as a complete job.

Mr. Cannon: May I state also for the record, there are a number of questions and answers which are not proper under the rules of evidence, even assuming that your Honor did have jurisdiction to consider the validity of the regulations but for the purpose of expediency here I am not objecting to those questions and answers.

Mr. Skulason: What is the last question and answer?

The Witness: The total charge for picking and hauling at the time.

Mr. Skulason: Yes; was so much?

The Witness: So much per head.

Mr. Skulason: Yes.

Q. Was that the situation in 1942, when the OPA regulation came in? A. Yes.

Q. What, if any, regulation was then issued regarding that, or was there any?

A. Well, at the time that the OPA came in, as I say, we were charging 23 and 25 cents, and later on in the year, or early last fall, there was a regulation come out that we could not buy dressed turkeys that we had processed for the growers, that we had to buy[92] them on a live basis, and after quite a little discussion back and forth Washington

(Testimony of C. W. Norton.)

finally ruled that we could continue to buy on a—to buy dressed turkeys that we had processed, and providing we didn't exceed the dressed turkey ceiling. That was straightened out on the 24th of last November.

Q. So you went on then on that basis?

A. That is correct.

Q. Then was there some regulation made as to the per head charge later?

A. Previous to that we had—several of the dealers in the state had raised the per head charge from 23 cents on hens up to 25 cents, and from 25 on toms to 28.

Q. Had you done that?

A. Yes; we had in some plants.

Q. When did you do that?

A. That was in—I believe it was last November.

Q. And carried on at that figure for some time?

A. Carried on for a period of two or three weeks.

Q. Then what happened?

A. An investigator for the OPA came in and stated we were under violation for a pick-and-haul charge and said we must return to our former charge and make a voluntary—rather, we had to pay the Treasurer of the United States the amount of the alleged overcharges we had made.

Q. Was that amount ascertained in the case of your company? [93]

A. Yes. It was figured at so much per head on the birds that we had hauled at the higher

(Testimony of C. W. Norton.)

charge, picked and hauled at the higher charge at three of our plants.

Q. And you paid a fine, did you?

A. We paid the fine, yes, sir.

Q. How much?

A. I believe it was \$220 and some odd cents.

Q. Yes.

A. But the other dealers in the state, the majority of them also paid fines right along with us.

Q. Up to this time as far as we have gone now, you were on the per head basis, weren't you?

A. On the per head basis. That is the only way we have ever been.

Q. And did you proceed then on that basis for some time after this regulation came?

A. We proceeded on that basis. In fact, that is the basis we proceeded on all through the year. However, there was another order out that was contemplated, changing that to a per pound basis.

Q. You refer now, don't you, to the order of—

A. G-93.

Q. G-93?           A. I do.

Q. Well, that was issued on the 2nd of May, I believe, and effective on the 8th of May, wasn't it?

[94]

A. I believe that is right. Yes.

Q. This year?           A. 8th of May.

Q. In what manner did that order come to your notice?

A. Well, we were sent a copy of the order itself, mailed a copy of the order itself. The order wasn't

(Testimony of C. W. Norton.)

dated. Then later on we received an interpretation of the order.

Q. That is, you are familiar with the plaintiff's, that is our Exhibit B, isn't it?

A. That is correct.

Q. B, I should say? A. That is correct.

Q. Yes. Now Mr. Norton, when that came in what, if anything, did you try to do about it?

A. Well, it so happens that I am on the National Advisory Board of the OPA in Washington, and immediately they began to see that if it could not be straightened out so it would not disrupt the entire industries in the States of Oregon and Washington, and we have been working on that basis ever since. We have been trying to get an interpretation.

Q. When you say "We," who do you mean?

A. Well, our company and other dealers in this district—other dealers and growers.

Q. Now you recall the provisions, of course, of that order providing for the pick-and-haul charge on a per head basis? [95] A. I do.

Q. And for loose turkeys on a per pound basis?

A. That is correct.

Q. Yes. Now what is your criticism of that feature that I have just now mentioned?

A. Well, the order sets up a pick-and-haul charge—kill-and-haul, it calls it—of 30 cents on hens and 35 cents on toms. The interpretation that came out says that you cannot use that as your

(Testimony of C. W. Norton.)

method of deduction, if you have coolers; that if you do have a cooler you must charge on a per pound basis. Now the 30 cents per pound on hens, figuring our average hens in Oregon they are fifteen pounds, it would be 2 cents a pound. On the per pound basis it sets up  $3\frac{1}{2}$  cents a pound. In other words, it is a cent and a half higher if you have a cooler in your plant. Whether you cool them outdoors or not wouldn't make any difference. If you have a cooler, according to the ruling, you would have to charge an extra cent and a half. On toms it sets up a basis of 35 cents or 3 cents a pound if you had a cooler, and the difference between what we were charging the growers, taking our basis, and what the OPA made us go back to after we had raised, of 23, and the average of hen turkeys of 15 pounds at  $3\frac{1}{2}$  cents a pound would be  $52\frac{1}{2}$  cents. In other words, we would have to raise our service charge to the growers the amount of  $29\frac{1}{2}$  cents. In the case of toms it was much higher. Toms will average—at that time toms would average 24 pounds. Three cents a pound on [96] a tom would be 72 cents. We had been charging 25, so there would be a raise of 40 cents a head, so far as the grower is concerned, on taking a tom.

Q. Mr. Norton, to help us all understand this, would you take the case of a turkey of a certain weight and give us the figures and the results, and the difference between the former price and the one required by this order.



(Testimony of C. W. Norton.)

A. Well, it is more easily done strictly by the pound basis, per pound.

Q. Very well.

A. I mean the charge—the charge per head. If you are charging 30 cents a head for an item and for any reason you would be compelled to charge 52½ for that item it would be 29½ cents difference.

Q. Let's take a turkey.

A. Well, a 15-pound turkey, that would be 2 cents a pound.

Q. What would be the difference?

A. The difference between what we had been charging and what the regulation said that we should charge would be 2 cents a pound on that particular item, a 15-pound hen.

Q. That would be the excess over what you were charging that you would have to charge the consumer?

A. That would be in excess of what we had charged for the past year.

Q. And what do you claim now as to the effect of that on your business? [97]

A. Well, the natural effect is, the growers—in the first place may I explain to the Judge, there is an embargo on turkeys and there has been an embargo on turkeys since a year ago in July, with the exception of a very few months, and were it not for the embargo the growers would undoubtedly pool together or make some arrangements to dress their own turkeys. In addition to that, the cooperatives

(Testimony of C. W. Norton.)

that are in question, or that are operating, are allowed to pay a patronage dividend, so it does not affect them. They can pay this money back and they are going out to their growers on the basis that they can refund and asking them to sign up to join the cooperative on that basis. They have covered the territory pretty well about that.

Q. And the effect on your business would be what?

A. We would not have the turkeys to handle or to dress, either. It would be taken out of our hands.

Q. Have you been disposing of your turkeys to the Government for some time?

A. All of the turkeys since last July, with the exception of a few months, there is an embargo that they must all go to the armed forces. At the present time there is a strict embargo. There can't be a pound sold outside of that—their care; and that has been on, in fact, that order was on when this G-93 came into existence. We were compelled at that time to sell to the army and the growers were compelled to sell through a licensed dealer.

Q. Now has this order had any practical effect in the matter of [98] producing turkeys, shall we say harvesting turkeys, processing them and delivering them to the Government?

A. Since last May it has been in the shape it is now. The growers are simply holding back. They don't want to sell. In the meantime the war pool

(Testimony of C. W. Norton.)

is right on our heads trying to get turkeys for our armed forces. If we are going to have to feed them overseas we have to get turkeys and since this order has been in effect, May 8th, there has been nothing but confusion among everyone, dealers and growers alike.

Q. Speaking of confusion, do you mean among your dealers or all of the dealers?

A. All of the dealers.

Q. Throughout the state?

A. Throughout the state.

Q. Excepting the cooperatives?

A. Excepting the cooperatives.

Q. This last order applies to Washington and Oregon, except in the matter of accounting. What do you know of the effect of it on the State of Washington?

A. Washington men have given us information—they have operated their turkeys up in Washington the same as Oregon has—that they are not getting the turkeys. They are not dressing.

Q. Is there a time, Mr. Norton, in the life of a turkey when the turkey is peculiarly fit for processing and food? Is there such a thing as a ripening period for turkeys? [99]

A. Under the present feeding programs turkeys have a certain peak and that peak on toms will come at approximately twenty-six weeks and on hens it will come at approximately twenty-four weeks. If they go past that period they go downhill, the same

(Testimony of C. W. Norton.)

as an apple on the tree or anything else. There is a ripe period, and not only from a price standpoint but from a food standpoint.

Q. And that is how that is right now?

A. That is the way it is right now.

Q. From now on, unless you can process them and get them into channels of trade, they begin to deteriorate?

A. They begin to deteriorate, and in the meantime the army is not going to have their birds.

Q. As one in this business, with all of your experience, a member of the board and all of that, how do you look upon this situation, Mr. Norton?

A. Well, it is unbelievable to me that an order of that kind could possibly come out where it sets a minimum charge that we had to charge a grower; setting up a price in excess of what it cost us to do that job, was beyond me. I still can't believe that an order of that kind could come out.

Q. Can you tell us what it costs you to do the job?

A. Our average charge of the picking and hauling—we have been keeping the records here for some time and our average charge of the pick and haul will run from 24 to 26 cents per head.

Q. Have you computed that recently, Mr. Norton? [100]

A. Yes, I have. I have two plants that computed it.

Q. You gave me I think an analysis of it this morning?

A. Yes, I did.

(Testimony of C. W. Norton.)

Mr. Skulason: Your Honor, may the bailiff hand the witness this, please.

(Paper passed to the witness.)

Q. What have you there, Mr. Norton?

A. This is the cost figures at our Portland plant.

Q. Would you kindly read some figures into the record illustrating what you are claiming.

A. September 22 the kill-and-haul charge, including the dressing, hauling, depreciation and rent, power and water, amounted to 23.37 per head; September 25th it was 18.52 per head; September 26 it was 27.68 per head; September 27th it was 23.19; September 28th it was 23.60, on a definite amount of turkeys.

Mr. Skulason: We will offer that in evidence and ask that it be marked, your Honor.

The Court: Admitted.

The Witness: You have the McMinnville plant there, too, if you want it.

Mr. Cannon: I object to that specifically on the ground it is incompetent, irrelevant and immaterial; this Court has no jurisdiction; on the ground, even if the Court did have jurisdiction I submit the validity of the order would still be incompetent, irrelevant and immaterial. [101]

The Court: It will be admitted, subject to the objection.

(The statement so offered and received, headed "Picking and Hauling Costs at Portland", was thereupon marked Plaintiff's Exhibit 1.)



(Testimony of C. W. Norton.)

## PLAINTIFF'S EXHIBIT No. 1

## PICKING AND HAULING COSTS AT PORTLAND

Sept. 22, 1944

Hen turkeys .....	738	.30	\$221.40
Tom turkeys .....	41	.35	14.35
	<hr/>		<hr/>
	779		235.75

Dressing labor .....\$100.83

Hauling Charge ..... 61.29

Depreciation &amp; Rent ..... 15.00

Power &amp; Water ..... 5.00

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\$182.12    \$ .2337 per head

Sept. 25, 1944

Hen turkeys .....	970	.30	\$291.00
Tom turkeys .....	16	.35	5.60
	<hr/>		<hr/>
	986		296.60

Dressing labor .....\$ 99.36

Hauling charge ..... 63.35

Rent &amp; Depreciation ..... 15.00

Power &amp; Water ..... 5.00

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182.71    \$ .1852 per head

Sept. 26, 1944

Hen turkeys .....	198	.30	\$ 59.40
Tom turkeys .....	570	.35	199.50
	<hr/>		<hr/>
	768		258.90

Dressing labor .....\$ 99.37

Hauling charge ..... 93.25

Rent &amp; Depreciation ..... 15.00

Power &amp; Water ..... 5.00

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212.62    \$ .2768 per head

(Testimony of C. W. Norton.)

Sept. 27, 1944

Hen turkeys .....	13	.30	\$ 3.90
Tom turkeys .....	795	.35	278.25
	<hr/>		<hr/>
	808		282.15

Dressing labor .....	\$134.42		
Hauling charge .....	32.96		
Rent & Depreciation .....	15.00		
Power & Water .....	5.00		
	<hr/>		
	187.38	\$ .2319 per head	

Sept. 28, 1944

Hen turkeys .....	512	.30	\$153.60
Tom turkeys .....	415	.35	145.25
	<hr/>		<hr/>
	927		298.85

Dressing labor .....	\$118.48		
Hauling charge .....	80.34		
Rent & Depreciation .....	15.00		
Power & Water.....	5.00		
	<hr/>		
	218.82	\$ .2360 per head	

Mr. Skulason: Q. Mr. Norton, have you given your time exclusively during several years last past to this business? A. Yes.

Q. It has been your sole business?

A. That is all the business I have had.

Q. You have given study to it? A. Yes.

Q. Its various features?

A. I have been in it all the way through, working from the bottom of it up.

(Testimony of C. W. Norton.)

Q. How long have you been on this National Board.      A. About a year and a half.

Q. Now will you tell the Court, if you can, what reason, if any, exists for changing this processing charge from per head to a per pound basis, as you understand it? What reason is there, if any?

A. Well, I would not have any idea why they would wish to change it from a per head to a per pound basis, so far as the States of Oregon and Washington are concerned. As you understand, this order only applies to Oregon, Washington and California. It is not a national order; it is a regional order. In the State of California the majority of the turkeys are bought on a live basis and then all [102] through the States of Oregon and Washington they are on a dressed weight and grade basis, and why they would want to change it I don't know. I can't imagine.

Q. When this order came did you seek an interpretation of it from various sources?

A. Yes. I took it up with the local office; I took it up with the San Francisco office; then I took it up with our attorney in Washington and through the national office in Washington.

Q. There is an attorney for the OPA—let's call him that—in Washington, isn't there?

A. Yes. Mr. Eisenberg.

Q. What is his name?

A. Ernest Eisenberg.

Q. Did you take it up with him?

(Testimony of C. W. Norton.)

A. Yes. We took it up with him, and my attorney took it up with him in Washington.

Q. What is the name of your attorney in Washington? A. Marshall Diggs.

Q. And you did talk to the regional office in San Francisco, did you?

A. Yes, sir. I talked to the regional office in San Francisco and also the local office.

Q. Did you get any relief or satisfaction from these talks?

A. I could not get any satisfaction at the local or regional offices, or particularly the regional office, but in the Washington offices [103] we were put off a time or two due to the fact they were calling a meeting of the board in Chicago and we have had two meetings in Chicago since this order came in and we have been continually promised to get a revocation of this order.

Mr. Cannon: I move to strike that as hearsay.

The Court: The motion is denied.

Mr. Skulason: Q. Was there a demand made on you for an inspection of your books of account?

A. Yes, there was.

Q. And what response did you make to that?

A. I told them that I had it up with the local attorney here and with the Washington attorney and we were expecting a ruling in regards to the order, and I asked them to wait until we could get such a ruling.

Q. Did you ever refuse outright to let the accounts and books be examined?

(Testimony of C. W. Norton.)

A. No, I did not.

Q. And there was a meeting, was there, of the Board in Chicago on September 9th?

A. There was.

Q. Was this matter considered then?

A. Yes. We had two meetings on it in Chicago.

Q. Was there any conclusion reached as to this order G-93?

A. Waldo Haldeman, who is the head of the OPA in Washington of this particular division, and Ernest Eisenberg was there, and also our [104] attorney, Marshall Diggs, and three Pacific Coast wholesalers or processors that also attended the meeting, and the head of the OPA office in Chicago was also there, and they promised that there would be some ruling out on it that would clarify it, as he said, by the time we got home.

Q. Has it come?

A. It hasn't, only in this—there is a new ruling out that perhaps will clarify it.

Q. What do you refer to?

A. They are going to—I understand, the last wire that I have, they will allow the wholesaler-processor to act as an agent for the grower in order to get around this particular provision.

Q. Now what will be the actual operation of that?

A. In that way we could be competitive with the cooperatives and can return to the growers the amount that they are entitled to under the order.



(Testimony of C. W. Norton.)

Q. By whom is that action being taken?

A. By the Washington, D. C., office.

Q. What evidence have you of that?

A. I have a wire.

Q. Do you have the order? A. Yes.

Q. Will you produce it, please?

(Witness produced paper.)

Mr. Skulason: Mr. Bailiff, will you kindly hand this back to [105] the witness.

Q. Mr. Norton, is that telegram what you referred to in relation to that recent order?

A. Yes, signed by Byron Cisco. Byron Cisco is an associate of Marshall Diggs, and he received this from the OPA last night.

Mr. Skulason: Your Honor, may I have the witness read it? It is brief.

The Court: Yes.

Mr. Skulason: Q. Read it please.

The Court: Would you like it read?

Mr. Skulason: Yes.

A. "OPA permits agent to sell turkeys to Government agencies for account of any grower or processor at permitted ceiling price for such sales and return to owner any amount not greater than that which owner could himself have obtained. Fee which agent may charge is limited to that permitted by Service Regulation No. 165."

Mr. Skulason: I offer that in evidence, your Honor.

The Court: It is admitted.

(The telegram from Byron Cisco to North-

(Testimony of C. W. Norton.)

west Dairy and Produce, so offered and received, was marked Plaintiff's Exhibit 2.)

PLAINTIFF'S EXHIBIT No. 2

(Western Union Telegram)

WUAD 250 54 Collect — TDW Chevy Chase Md 5  
630P 1944 Oct

(Western Union Telegram)

Northwestdairy and Produce:

OPA Permits Agent To Sell Turkeys To Government Agencies For Account Of Any Grower Or Processor At Permitted Ceiling Price For Such Sales And Return To Owner Any Amount Not Greater Than That Which Owner Could Himself Have Obtained. Fee Which Agent May Charge Is Limited To That Permitted By Service Regulation #165—Byron Cisco.#165.408pt.

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Mr. Skulason: Q. What does that mean now? What is this service regulation?

A. Service Regulation 165, my understanding is, is a regulation governing the services that you charge. It might be for grinding [106] grain. It is a service regulation. It is what you previously charged in a base period.

Q. Did you show me a letter this morning, Mr. Norton, concerning this matter?

A. Pardon?

Q. Did you show me a letter this morning concerning this matter?

A. Yes, I did.

(Testimony of C. W. Norton.)

Q. Whom was that addressed to?

A. Mr. Perry.

Mr. Skulason: Mr. Perry May I have that letter, please?

(Letter passed by witness to Mr. Skulason.)

Mr. Skulason: That is a private letter, your Honor, which we don't want to use now.

Q. Mr. Norton, assuming now that this regulation is in force that you have been telling us about, where does that leave you as a processor and wholesaler and dealer in turkeys, in what position?

A. In a position of charging the growers more than we should charge for the dressing of his turkeys.

Q. But if you are allowed to return the excess——

A. If we are allowed to return the excess we will be on a footing with anyone else. We will be on the same basis as the cooperative and anyone else. We will be right back to where we were before this order came out, before G-93 here ever came into existence.

Q. And would that be, from your standpoint, fairly satisfactory and practical? [107]

A. This particular order, the order that is out now, pertains only to sales to the Government and, as you know, there is an embargo on now. We can't sell to anyone else. So it would answer the purpose at the present time, and after the embargo is lifted, which will be some time yet—I understand

(Testimony of C. W. Norton.)

the embargo will not be lifted until November 5th, and before it is lifted, at that time we must commit ourselves as to how many turkeys we will give the Government before they will lift the embargo for civilian trade for Thanksgiving. The Government wants sixty million pounds and they want them now.

Q. Notwithstanding this new order, are you still complaining about G-93?           A. I am.

Q. Why?

A. Merely because we have to stay by our usual practices in the territory here of handling the turkeys for the growers and charging them on a per head basis. This is a temporary measure here that is coming up now of handling the turkeys for the Government. What will it be after the Government is through?

Q. Suppose this order G-93 should have been held to have been operative from May 8th to the time of the issuance of this order, would you still be in jeopardy?           A. Yes.

Q. Why?

A. Because we have charged 30 cents for picking and hauling hens [108] and 35 cents for picking and hauling toms, which they say is in violation.

The Court: What will be the penalty?

Mr. Skulason: Yes. What will be the penalty, Mr. Norton?

A. According to the information they give out it will be a three-for-one; they could assess a three times penalty. On that basis it could be three times the difference between the 30 cents—it would be

(Testimony of C. W. Norton.)

three times  $22\frac{1}{2}$  cents, which would be  $67\frac{1}{2}$  cents a head for every turkey we dress, and in the case of toms it would be more.

The Court: I don't understand that.

Mr. Skulason: No. I will have him explain that.

Q. What you fear, what you are apprehensive about, is that you may be called on to pay damages?

The Court: If you charge more than the order or regulation you may be penalized three times. If you charge less what is the penalty?

A. They claim it is the same.

The Court: He says it is the same.

The Witness: The OPA says this is a minimum law.

Mr. Cannon: I move to strike that, your Honor, as heresay.

The Witness: We have the evidence, do we not?

Mr. Skulason: I will see if I can't elucidate that some, your Honor.

The Court: Let me ask you lawyers; you have got to be [109] specialists now, you and Mr. Henderson, in OPA cases: Do you know **anything** in the law that says there may be a charge of three times the amount less than the prescribed minimum?

Mr. Henderson: No, your Honor, but I know nothing in the law that says they may fix a minimum price, and if they do it——



(Testimony of C. W. Norton.)

The Court: One thing at a time. The only thing that has ever been cited to me in any case I have heard is the few sentences in the Price Control Act which say where anybody charges more than the maximum allowable he may be subjected, in the discretion of the Administrator, to a suit for three times the amount of the overcharge.

Mr. Henderson: That is right.

The Court: Is there anything else in the law?

Mr. Henderson: Not that I know of, your Honor.

The Court: Now then, somebody has told him that he could be penalized for charging less than the prescribed minimum—that he can be penalized three times. If that is in documentary form let's see that first. He says it is something somebody has told him.

Mr. Henderson: You can see what his apprehension is based on. If he sees they have made a regulation that relates to a minimum charge and that is not provided for by the law, I assume he has the right to assume they may do anything.

The Court: He says it is not an assumption. He says somebody told him. Now if it is in writing let's see it.

Mr. Skulason: Q. Now did you say somebody told you that? [110]

A. The interpretation of G-93 says that it is a violation of the law if you charge less than that price and it is a violation of the Price Control Act if you charge more.

(Testimony of C. W. Norton.)

Q. In other words, you must charge just so much?

A. You must charge just so much, according to the interpretation of the order.

The Court: All right. You still haven't made any progress.

Mr. Skulason: As to the consequences to him?

The Court: Right.

Mr. Skulason: Yes. Now then, we have been—let me get from him clearly what he has in mind, your Honor.

Q. You say you are apprehensive of certain consequences if this order G-93 is sustained as a valid regulation, Mr. Norton, and I think you said you were afraid you might be charged three times if you charge more than the maximum price. Now what else, if anything, have you in mind as to the consequences to your business?

The Court: Three times the minimum?

Mr. Skulason: Three times the minimum, yes.

A. The law sets up, as I understand the law it sets up a penalty for a violation of the law, and if it is a violation of the law and there is a penalty set up, the natural interpretation would be if you violated it below you would be in violation; if it is a minimum law you would be in violation below as well as you would be in violation if you are above.

Mr. Skulason: If the Court please, we are clear on the [111] interpretation placed on G-93 by Exhibit B, are we not? I pleaded that and I want to

(Testimony of C. W. Norton.)

be sure the Court gets our points there. If we may look at Exhibit B, the last paragraph in Exhibit B—and of course your Honor is familiar with the general provisions of the Act as to penalties and punishment, and here is what this respondent is up against. This is the interpretation.

The Court: Where are you reading now?

Mr. Skulason: On Page 1 of Exhibit B, the last paragraph. We have considered it and let's get it firmly in our mind; and this is what we claim is utterly unauthorized and utterly unreasonable:

"The above prices are the only prices"—and they underscore the word "only"—"which may be charged for processing services. Any charge of less than the prices fixed in this order will be considered an attempt to evade Revised Maximum Price Regulation 269. Charges of more than those prices would be in outright violation of this order."

Of course the consequences of violation are prescribed in the Act. Whether that can be reduced to an estimate in dollars and cents the penalties are there, imprisonment and fine, if he does not charge precisely these prices.

The Court: Well, let's talk lawyer talk now. I understand he is talking businessman's talk. This is on the OPA basis. I can understand about a fine and imprisonment, and I can understand about administrative suspension order, but he is saying that he thinks he is up against some penalties and damages, three times [112] something he thinks he is up against.

(Testimony of C. W. Norton.)

Mr. Skulason: Well, I suppose he would be. If he exceeded the maximum price of course he would be on that.

The Court: We can agree to that.

Mr. Skulason: They fix a price now and if he exceed it then of course the penalties come in.

The Court: Yes, but he is charging less.

Mr. Skulason: Well, what they have recited here, your Honor, is unknown to the law, so far as penalties are concerned—so far as penalties, either double or treble, are concerned. There is not in the law, so far as I know, anything about a minimum price and the consequences of violating a minimum price fixed.

The Court: That is why I asked.

Mr. Skulason: Isn't that the way you understand it, Mr. Henderson?

Mr. Henderson: Yes.

The Court: So, so far as you are advised as his counsel, you are in a position now to reassure Mr. Norton as to this thing, that as far as you know he would not be subject to treble penalty surely?

Mr. Skulason: He might go to jail, be fined.

The Court: I know how businessmen are. They take chances on jail oftentimes when they don't like to lose money. What was troubling him a moment ago was this treble penalty.

Mr. Skulason: Yes; I know he had that in mind.

The Court: Our discussion now has developed, so far as you and [113] Mr. Henderson are at pres-

(Testimony of C. W. Norton.)

ent advised—I won't say it is your position—he could not be subject to the treble penalty for doing what the OPA requires, for charging less than they prescribe.

Mr. Skulason: Yes. If he charged more, of course that would come in.

Q. Now there is a classification of turkeys as loose and boxed. In actual practical operation what does that mean?

A. Well, there are two different—there are two separate and distinct items. Kill and haul is the process of removing the feathers, and so forth. The loose turkeys, it is the handling of turkeys in loose form. Boxed, of course, is handling turkeys in boxed form. All Government turkeys must be boxed and there are certain price regulations set up for boxed turkeys and for loose turkeys in a wholesale way.

Q. Mr. Norton, if you were to operate under it——

The Court: Loose means unboxed?

A. That is right.

The Court: Unboxed?

A. Unboxed; loose.

Mr. Skulason: Yes, unboxed.

Q. If you were to operate under it would it have any effect upon the regular ordinary control and practice of your business?

A. I am not quite clear on the question.

Mr. Skulason: Read that to him.

The Court: He has answered that. [114]



(Testimony of C. W. Norton.)

Mr. Skulason: Q. Meaning it would disrupt and disorganize your business, would it?

A. That is correct.

Q. Now then, there came out one more order—apparently in the making of orders there is no end—known as G-3, didn't there?

A. Original order G-3.

Q. G-3, and it seems that came out on the 30th of August, last August. Tell the Court now what that provided from your practical point of view.

A. Well, in the national order, M.P.R. 269, it sets out a definition of wholesaler; it sets out a definition of a processor, and so forth, covering the United States. There was one exception on the national order—well, there is one or two exceptions, and one exception in the national order was in the description where the destination was quite great, that we be allowed 200 miles in which to operate and still operate as a wholesaler. It also gave us a list of accounts that could be sold to and still be classed as a wholesaler.

Q. You mean that was the situation before this?

A. Why, that is the national order. The regional order came out and cut the destination from 200 miles to 100 miles in which we could operate. It cut down to the amount—I mean, the number of accounts that we could sell to and still be classed as a wholesaler, and if for any reason they found that they could change our status to a processor from a wholesaler it would take away [115] the markup.

(Testimony of C. W. Norton.)

The markup as a wholesaler is a cent and a half a pound for civilian trade and in the case of the Government it is a cent a pound. However, in case of the Government either a processor or wholesaler can get the same price. In the case of sale to the civilian trade your cent and a half markup would be taken away, provided you could be classed as a processor. That cent and a half naturally would have to come out of the grower now, because we allow a cent and a half to operate on and if that was taken away, if we continue to operate we would have to pass it back to the grower.

Q. And the grower probably would not like that?

A. Growers don't like it, of course. They wouldn't.

Q. What is the effect of this reduction in the radius from 200 to 100 miles?

A. Well, out here 100 miles is not very far. We can't even service the Coast area of Hoquiam, or any of that district up through there, and can't serve a lot of the trade we have been in the practice of serving in the past.

Q. Did you complain and protest against this order?

A. We called a meeting a week before the order was to go into effect and asked for recommendations or criticisms—a meeting of dealers; also there were some growers present. We made our recommendations and made our criticisms, and when the

(Testimony of C. W. Norton.)

order came out it was verbatim to what it was when we first looked at it.

Q. When you speak of this meeting, by whom was that attended? [116]

A. It was called at the OPA office and attended by the dealers here in the city and some growers out in the county.

Q. How many about?

A. Oh, there was twelve, fifteen at that meeting. There was also a growers' meeting held. I think there were about seventy-five at the growers' meeting.

Q. Yes; representing about how many people in the trade?

A. The growers' meeting represented about 300,000 head of turkeys, the way I understood it.

Q. And you called attention to this very criticism you are making now?

A. That is correct.

Q. And got no relief?

A. No, we haven't. We didn't get any relief. However, the local office sent a list of the recommendations and criticisms to the regional office.

Q. By the way, reverting to the demand on you for the accounts and books, you may state whether or not you have endeavored to act in good faith throughout all these proceedings?

A. Well, we have worked as close as we possibly could with the local OPA offices here, and we have tried to interpret these different regulations

(Testimony of C. W. Norton.)

that have come out. We have been on friendly terms so far as the local OPA office is concerned.

Mr. Cannon: I move to strike that as a legal opinion of the witness. [117]

The Court: Motion denied. Miss Gallagher said the same thing the other day.

Mr. Cannon: I beg pardon?

The Court: Miss Gallagher said the same thing the other day, if I understood her.

Mr. Skulason: Q. How long have you been on the Board?

A. About a year and a half. That is, the National Board?

Q. Yes. A. About a year and a half.

Q. And state whether or not you have tried in every way to cooperate with the authorities?

A. Well, we held joint meetings, that is the same Board held joint meetings with the OPA and War Food Administration. Part of the time they were held in Washington, D. C., and part of the time in Chicago.

Mr. Cannon: The same objection.

The Court: The same ruling.

Mr. Skulason. Q. Have you tried to help instead of hinder in all of these matters of furnishing food to the military forces?

A. That is right. We are licensed operators to handle both turkeys and poultry so far as the armed forces are concerned.

Q. You are in thorough sympathy with what is attempted to be done—— A. I am.

(Testimony of C. W. Norton.)

Q. ———to advance the war effort?

A. I am. [118]

Q. Now there came still another order, I believe —yes—there came an amendment to G-93, didn't there?

A. Yes.

Q. On September 19th, 1944. Will you explain to the Court the practical operation of that?

A. Well, in practical operation it is a continuation of the original order. The only difference that it makes, it sets up—it has cut the margin of loose dress from  $3\frac{1}{2}$  on hens to 2.8, and from 3 cents on toms to 2.8. It may have for both the same effect as for the services on the loose basis.

Q. It does away with the per head charge, does it?

A. It does away with the per head charge.

Q. And for the pick and haul it places that on a basis of 2.8 cents a pound?

A. For both hens and toms.

Q. It doesn't make any change in the loose charge?

A. No; for "loose" charge it is designated 2.8 on the loose basis. It has taken out the original category for haul, kill and haul, on the basis of the original order. That has been taken out.

Q. Has that helped any?

A. That has not helped a bit.

Q. Explain why.

A. As an illustration, 2.8 on toms against 3 is only one-fifth of a cent difference, which is actually not helping any. So far as the tom price is con-



(Testimony of C. W. Norton.)

cerned we are still way too high on the service [119] charge. We are still way too high on the service charge on hens. It is just lessened. It is a small fraction less than the other but it is a duplication of the original order.

Q. And there is still discrimination in favor of the cooperatives?

A. Yes. There is no attempt made to regulate the cooperatives in regard to patronage dividend—paying a patronage dividend.

Mr. Skulason: May I ask you one question, your Honor? This is something that the witness knows more about than we lawyers, I think, any of us.

Q. Is there some feature connected with this that I have omitted asking you about, Mr. Norton, that you would like to explain to the Court?

A. I would like to explain one thing. In talking to Washington yesterday in connection with this order that came out today allowing us to act as an agent, it is contemplated by the Washington office to allow us to return to the growers on an equal basis with the patronage dividend. That was taken up when we were in Chicago and my understanding is that within a few days we will be permitted to refund to the growers on a patronage dividend so that we can be competitors, owing to the seriousness of the turkey situation.

Mr. Cannon: I move to strike that as hearsay.

The Court: The motion is denied.

Mr. Cannon: Exception.

(Testimony of C. W. Norton.)

Mr. Skulason: Q. That is what you explained somewhat before. Now is there any other feature I haven't brought to your attention? [120]

A. Well, the only thing, in regards to this order we have been operating as we have for a period of better than twelve years and charging the growers in one way and to go back is certainly the wrong direction. We have been buying these turkeys on a dressed weight and grade and the majority of them have been bought under Government grades, and we have built the turkey industry up in the state to the point where it is the fourth state in the Union, so far as the production of turkeys is concerned, and certainly the grower is entitled to all that his efforts will bring and we don't need that extra money for processing and I can't see why we should not be continued to operate as we have in the past.

Q. In going to the grower now to buy his turkeys you of course would have to disclose to him what your processing charge would be under this order?

A. That is right.

Q. And the reaction of the grower is what?

A. Well, the reaction of the grower is that by us charging the 30 and 35 cents, they have, in a number of cases the OPA has contacted them direct and told them that they would be in violation the same as we if they accepted the service charge for less than what the order prescribed, and at the present time the growers are afraid to sell the turkeys.

(Testimony of C. W. Norton.)

They are afraid that they will be penalized. Our poultry is down at the present time. We are not dressing simply because the growers don't know what to do. They have been warned. They have been contacted in the country and [121] have been warned that they will be penalized if they sell to us.

Q. What evidence have you of that, that they have been warned?

A. We have letters to that effect.

Q. Have a witness here in this courtroom?

A. We have a witness in the courtroom, yes.

Q. And the damage to your business as a consequence of this, can you calculate it? Is it susceptible of computation?

A. Well, it will be pretty hard to calculate in this respect. Everyone is interested in the order, from the bankers that are financing turkeys. They are interested in the order. The county agents that are helping feed these turkeys are interested in it. The feed dealers are interested. Incidentally we manufacture and sell feed to growers. We also help finance turkeys. And this all depends on what the grower gets for his birds. Any little cost of a cent and a half a pound means whether the grower loses or whether he don't.

Q. Generally speaking, the effect on your business would be what?

A. It would naturally cut the production. It would take the turkeys out of our hands. We have seven plants built up for this kind of business, and

(Testimony of C. W. Norton.)

certainly the growers, as soon as they can get material to build plants of their own, will not pay that kind of money to get somebody to dress them for them.

Q. And you say the turkey business is the major portion of your business?

A. It is fully half. [122]

Mr. Skulason: You may cross examine.

Mr. Cannon: For the purpose of the record I renew my motion to strike all of Mr. Norton's testimony from the record on the ground it is incompetent, irrelevant and immaterial, the Court not having jurisdiction to pass upon the validity of the regulation and order under the exclusive jurisdiction provision, and also on the ground that the plaintiff herein has not exhausted its administrative remedy.

The Court: The motion is provisionally denied.

Mr. Cannon: Note an exception.

### Cross Examination

By Mr. Cannon:

Q. Now Mr. Norton, I have just one question I would like to clear up, although I am not going into the validity. You have got a complaint which has been filed by you in the case of—in other words, this complaint in equity which was filed on your behalf. You are familiar with that complaint, I take it?

A. I have read it, yes. I couldn't quote it.

Q. I don't mean that.

(Testimony of C. W. Norton.)

A. I am familiar with it.

Q. You read it over to see if any portion of it was not correct before it was filed?

A. That is correct.

Q. When you read it over there was nothing in there which you thought was not correct? [123]

A. That is right.

Q. Now I refer your attention, Mr. Norton, to Paragraph XVII, Roman Numerals on page 7, which I will read to you. It reads, "The plaintiff", that is you, "has in good faith complied with the Emergency Price Control Act and with the regulations issued thereunder until the issuance of said order, Exhibit 'A'," and Exhibit A is——

A. What paragraph was that again, please?

Q. That is Paragraph XVII on page 7.

A. Seventeen on seven?

Q. "The Plaintiff has in good faith complied with the Emergency Price Control Act and with the regulations issued thereunder until the issuance of said order, Exhibit 'A', and since then has followed the practices theretofore established under said Act and regulations without change." Now I will ask you under that, Mr. Norton, do you mean that since Exhibit A has come out that you did not change your practices insofar as your payments and charges were concerned but continued to charge the same prices and pay the same charges that you did heretofore? Is that what you mean by that?

A. No. That went up at the time that this order



(Testimony of C. W. Norton.)

came out.

Mr. Cannon: Please just answer the question "Yes" or "No" first; then you can explain it.

The Witness: Will you put the question again, please?

Mr. Cannon: Will you read the question again, please, Mr. Reporter. [124]

(The last question was read.)

A. We have continued to——

Mr. Cannon: Now "Yes" or "No" to that.

Mr. Skulason: I submit that the witness may answer, your Honor.

Mr. Cannon: I submit the witness may first answer "Yes" or "No", then explain his answer.

The Court: Gentlemen, this is the way we all used to wrangle the first year we began to practice. I don't care whether he answer "Yes" or "No", or tells it his own way. I have got about an hour here to try to learn something about this complicated case, and the little niceties we have no way for. Can you answer that "Yes" or "No"?

A. I am afraid not.

The Court: Do you understand the question?

A. I think that I do, and yet——

The Court: How do you understand the question?

A. Well, my answer would be this: That we have continued to buy and dress turkeys on a per head basis and charge the growers on the per head basis for picking and hauling.

(Testimony of C. W. Norton.)

Mr. Cannon: Q. Well then, respecting what you have said, as I understand it you have continued your practices and charges that were in effect prior to the issuance of Exhibit A, the order which is Exhibit A?

A. Exhibit A—is that the G-93 order?

Mr. Skulason: That is the G-93.

The Court: You haven't observed G-93, in other words? [125]

A. We haven't observed G-93.

Mr. Cannon: Q. In connection with the request for your records, as I understand it from your testimony the investigator of the Office of Price Administration did come to you and request to see your books and records which were required to be kept by the order in question, and also served you with an administrative inspection requirement which directed you to permit the examination and copying of those records; that is correct, is it not?

A. We were served two papers, two of the requests. The first one was signed by McDannell Brown, I believe was the name here, and the last——

The Court: You admit that, don't you?

Mr. Skulason: Yes.

The Court: That is admitted.

Mr. Skulason: There is only one feature there. There wasn't any service really ever made. The papers were left there and we made no point on it. We came into court on the theory demand had been made.

(Testimony of C. W. Norton.)

The Court: Service it is admitted was made.

Mr. Cannon: Q. Then there was another inspection requirement served upon you signed by Chester Bowles; that is correct, is it not?

A. That is correct.

Q. Now did you, or did you not, turn over the records to the investigator pursuant to that inspection requirement? [126]

Mr. Skulason: Your Honor, we did not.

Mr. Cannon: Just a minute.

Mr. Skulason: Pardon me.

Mr. Cannon: I think it is fair to ask the witness.

The Court: Why do you have to ask him? Counsel admits he didn't.

Mr. Cannon: First he says he did not refuse to let them see the records, if the Reporter will read it.

The Court: Don't read that. Did you say at any time this afternoon—did you deny at any time this afternoon that you refused—I have got a double negative there. Did you ever let these people see your records?

A. I never let them see them.

The Court: No. You declined to let them see them?

A. No. I asked for time until I could get an interpretation of this order, either from the local office or the Washington, D. C., office, because we were in communication with that office every day.

The Court: But anyhow you didn't let them see your records?

A. That is correct.

(Testimony of C. W. Norton.)

Mr. Skulason: We have said that all the time.

Mr. Cannon: Q. Now so also there could be no question about it, we are all here in court together, Mr. Norton, if there is any question that a demand was ever made upon you—and I take it now from the statements of your counsel there is no question there [127] was a demand made upon you for the production of your records, and there is no question that up to this time you have not permitted an inspection of your records required to be kept by the regulation by any agency of the Office of Price Administration; is that correct?

Mr. Henderson: He is asking for a legal conclusion. The man has stated the facts, if the Court please, whatever they constitute.

The Court: I find he has declined to let them see the records.

Mr. Henderson: That is correct.

Mr. Cannon: That is all.

(Witness excused.)

The Court: Now you have some testimony that is cumulative, I imagine?

Mr. Skulason: Well, I have something that is in just a little bit different category with one witness.

The Court: Put it off for the time being. I want to go over to your proceeding to require this man to let you see his records. You have a proceeding here, Miss Gallagher.

Miss Gallagher: Yes, your Honor.

The Court: Now I want your side of this where you are invoking my discretion to let you make your inspection. You haven't taken part in the other proceedings because you didn't concede jurisdiction in the other proceeding?

Miss Gallagher: That is correct. [128]

The Court: Now you are the moving party here. You are invoking my discretion.

Miss Gallagher: It is under section 202 (a), (b) and (e) of the act, the ones to which I referred the other day. Section (b) provides that "The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, to furnish any such information under oath or affirmation or otherwise, to make any keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations."

To carry out the provisions of section (b), section (e) requires that "In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in subsection (c)"—later language carries the same reference to subsection (b) which I have just read to you—"the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and



any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b)". So that the authority in the Court to issue an order requiring the [129] inspection, requiring the answering of a subpoena, also is given to the Court to issue an order requiring the inspection and copying of records. The same penalty for a failure to obey the order of the Court is provided in each case.

The Court: You want an order to see how many of these turkeys he has bought contrary to G-93?

Miss Gallagher: That is right, your Honor. We want to find out from whom he has bought the turkeys, to find out for sure that he has bought turkeys.

The Court: He has just told you.

Miss Gallagher: He testifies to that.

The Court: He just told you he bought turkeys contrary to G-93.

Miss Gallagher: Under our inspection requirement which we serve upon him we ask for inspection of the records required to be kept under M.P.R. 269, which is the General Poultry Regulation 2. What we are asking for is a look at the records he is required to keep under 269 and under G-93, in order to determine what he has bought turkeys for, what he has deducted for his processing charge, what he has sold turkeys for.

The Court: What do you mean, what he has sold turkeys for?

Miss Gallagher: He, in turn, after having bought and processed the turkeys from the farmer, has sold them then on to the Government, and those turkeys which have been rejected by the Army for being below the army grade he has been privileged at least to sell to the public. Without seeing his records we don't know that he has [130] sold to the public.

The Court: Well now, we have been talking so far about the charge for hauling and procesesing.

Miss Gallagher: That is right. That is one of our prime interests.

The Court: Yes.

Miss Gallagher: However, the interpretation which they have discussed says that a failure to deduct more—a failure to deduct the charges provided by G-93 are considered an evasion of M.P.R. 269. The whole picture is brought into this inspection requirement, because we want to look at his practice under M.P.R. 269, purchase and sale of turkeys, and under G-93, the processing of turkeys.

The Court: Now that is what you have to go into.

Miss Gallagher: I beg pardon?

The Court: That is what you have to go into. You will have to explain your side of it fully. I don't know that I will act at all, or not. I won't act until I understand your side of it, after full explanation. I understand about hauling and picking now.

Miss Gallagher: Well, you want a further explanation of that rule?

The Court: Yes. I want a lot of explanations. I want to know why you want to get into his books.

Miss Gallagher: All right.

The Court: What you think he may have done that is wrong. [131]

Miss Gallagher: Well, admittedly he has said in court today, and we have had it told us by hearsay otherwise, that he has failed and refused to follow the provisions of G-93.

The Court: That is what we have just been dealing with?

Miss Gallagher: Yes.

The Court: All right. Now go on to the other thing.

Miss Gallagher: All right. We want the evidence on that.

The Court: Go on to other things. I know that is discovery.

Miss Gallagher: Correct. When we get that evidence we also want to check through his records, particularly through his books and records of sales and purchases of turkeys to determine his compliance with the maximum price regulation 269, as well as the order G-93.

The Court: Well, don't mention G-93 any more, unless you have to.

Miss Gallagher: All right.

The Court: What may he have done, you think, in violation of 269?

Miss Gallagher: We don't know, your Honor. There are a number of things he might have done. We have no direct knowledge of what he has done

under 269. He has not, since the request, or since the first conversation with him, even allowed us to look at his records that he is required to keep by 269, so we don't know.

The Court: What is the relation, if any, between G-93 and 269?

Miss Gallagher: The relationship, as I explained before, his [132] refusal to deduct the proper charges under G-93 constitutes an evasion of 269 by returning to the grower a sum over the maximum price allowed to the grower under 269.

The Court: Well, give me an example. Be concrete now and specific. Just take a turkey and tell me what he may not have done.

Miss Gallagher: With reference to the example I just gave you, your Honor? An example of what I just stated to you?

The Court: Yes.

Miss Gallagher: If the ceiling price on turkeys is 42 cents per pound——

The Court: Forty-two?

Miss Gallagher: If it is. It may vary from place to place. Take that for an arbitrary figure.

The Court: To the grower?

Miss Gallagher: To the grower.

The Court: That is under 269?

Miss Gallagher: Yes, your Honor.

The Court: If you get tired you can sit down. Can you talk just as well sitting down?

Miss Gallagher: Yes.

The Court: All right. Lots of people can't.

Miss Gallagher: When I get into figures I always slow down a bit.

The Court: All right. [133]

Miss Gallagher: He is required to deduct from the 42-cent ceiling price which he pays to the grower a charge of 3 cents per pound for the processing.

The Court: That is what he is kicking about.

Miss Gallagher: Yes. That would return to the grower, then——

The Court: In other words, to state it the other way, he is required to charge him 3 cents a pound for processing?

Miss Gallagher: Yes. We will put it that way. He takes it out of what the grower gets.

The Court: Which he says is more than he has ever done before and more than it costs. That is what he claims.

Miss Gallagher: All right.

The Court: All right.

Miss Gallagher: The return to the grower, then, is 39 cents. If he charges only 2 cents——

The Court: That is what he has been doing. He has just told us that is what he has been doing.

Miss Gallagher: Yes. Then he returns to the grower 40 cents.

The Court: Yes. So the grower has more money than he is entitled to under 269?

Miss Gallagher: That is the theory. What we want, your Honor, is——

The Court: Now just keep going. I can understand a few simple things like this.



Miss Gallagher: Well, that is example of it.  
[134]

The Court: All right. Now have you got something else that you want to find out?

Miss Gallagher: All right. If it should develop—I mean, this payment to the grower then of more than the ceiling price allowed to the grower is in violation on the part of Mr. Norton, because the regulation requires that neither purchases nor sales in the course of trade or business should be made over the maximum ceiling price.

The Court: Well, we know he has charged the grower less than G-93 prescribes. He has told us that. So, to use your figures, the grower gets 40 cents instead of 39. The grower has been paid more than he is entitled to?

Miss Gallagher: That is the way, your Honor, in which G-93 ties in to 269.

The Court: Now what is the next thing he may have done wrong? He has bought them from the grower and he has paid the grower more than OPA says the grower is entitled to be paid.

Miss Gallagher: Of course he may have sold it over the ceiling price.

The Court: Have you any evidence about that? Do you have any suspicion about that?

Miss Gallagher: I have no definite information of that, even of a suspicious character, where I would suspect a man unless I had opportunity to see first.

The Court: I will tell you, Miss Gallagher, when

you ask me [135] to let you into a man's books we have to have a frank talk, just like in discovery and many other proceedings that come before me. We have hundreds of them. If you have any suspicion he is doing anything else wrong, why, you will need to tell me about it. You don't know? You don't know whether he has been selling for more?

Miss Gallagher: I don't know, your Honor.

The Court: You don't know?

Miss Gallagher: But I would like to know whether he has or not.

The Court: Why would you like to know? He has already paid more for the turkeys than his competitors have. He has paid a cent more for them than his competitors have.

Miss Gallagher: He has paid more. It could follow——

The Court: You think he might try to get that cent back by selling over——

Miss Gallagher: Over the ceiling price.

The Court: —over the ceiling price, but you have no information of it?

Miss Gallagher: There is one other thing in which we are interested, to know whether or not—to know his conduct with turkeys which are rejected after the Army B inspection, called C grade, I think, or no grade. They are permitted—Mr. Norton and other processors—to sell those to the public. It is conceivable that Mr. Norton could have sold those to the public without showing the true grade of them, without showing it was a no-

grade or a C-grade [136] turkey and selling it at an A or a B grade price.

The Court: Any complaint been made to you that he has?

Miss Gallagher: No direct complaint from any individual. We have been requested by our regional office, and have been sent by our regional office the lists of all turkeys—the amounts of all the turkeys that have been rejected by the army, the processor who had them rejected, the grades of the rejected turkeys, and the request placed to check on those turkeys to see that they are being sold at the proper ceiling price.

The Court: And you have done that with his competitors?

Miss Gallagher: We have in a few instances; yes, your Honor.

The Court: Do you expect to do it generally?

Miss Gallagher: Yes, your Honor.

The Court: With the larger operators?

Miss Gallagher: Yes.

The Court: Have you met any opposition from them?

Miss Gallagher: Not at all.

The Court: Have you found any evasions?

Miss Gallagher: No evasions yet, your Honor. The rejections have not been very heavy so far in this fall season.

The Court: Now do you want to talk from your side?

Mr. Cannon: Your Honor, excuse me, might I say one word, since I am here?

The Court: Certainly.

Mr. Cannon: Unless counsel has any objection for the defendant [137] in this matter.

The Court: He won't have anything to do with it. You just get my permission.

Mr. Cannon: If your Honor has no objection I thank you, your Honor. I would like to say, so it will be perfectly clear what our position is, regardless of whether it is followed by your Honor. I think it is only fair that I give you the position we take in regard to the record-keeping provisions and the provisions which permit our inspection thereof. It is our position that under section 202 (b) of the Price Control Act as amended, that the Administrator may require the keeping of certain books and records containing certain information in regard to commodities upon which a ceiling price has been established and that the Administrator may require such person to permit of the inspection and copying of records and other documents.

Now it is our position that it is not necessary for the Administrator to have probable cause that the defendant may have violated the regulations prior to making a request upon the defendant for an examination of his records. Further, it is our position when application has been made under section 202 (e) to the District Court that it is not necessary for us to show your Honor facts which would lead your Honor to conclude that the defendant probably had violated the regulations.

The Court: That would be between you and me and the appellate court. [138]

Mr. Cannon: That is correct, but I wanted to make our position clear on it, your Honor. And I might say this, in fairness to your Honor: A question I consider almost identical has been decided by some District Courts, and our Circuit Court of Appeals, under other acts which have similar record-keeping provisions, and so far as I know the decisions have consistently held it is not necessary for the agency to make a showing of probable cause in connection with their application to permit examination of the records.

The Court: I might say to you that I want to do it in another way; that I would give you a subpoena duces tecum instead of turning you into a man's business.

Mr. Cannon: Well, your Honor, of course this application is an application to show cause why the defendant should not honor our inspection requirement which has been served upon him.

The Court: I know that is the way you started it.

Mr. Cannon: That is correct. And that is the motion which we made and which is now before your Honor.

The Court: But I might say when you came to me to ask me to act that I preferred that you get the information in a different way; that I didn't like contempt proceedings, for instance, which I don't. They are very poor statutes. And so, in other words, I might think there is a different way to skin the cat than you refer to at the particular moment.



Mr. Cannon: That is correct, your Honor, and whatever your Honor thinks is right and rules, of course that is naturally what we will [139] abide by, but I wanted to make our position clear, and I would like to point out, too, one other thing, so your Honor will have it in front of you. I am not sure your Honor has been made aware of this: That section 202 (b) is the section which requires that the records be kept, and also it provides that the Administrator may require the inspection and the copying of such records. Now section (e) relates to going into the District Court for an order requiring the inspection requirement of the Administrator to be honored, and provides the provisions of this subsection, that is (d), shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

Now the provisions of section 4 (a)—in other words, we have chosen to come into your Honor's court because the defendant has not honored the inspection requirements. The other alternative which is given to us by the Price Control Act is provided in section 4 (a), which says: "It shall be unlawful", and so forth, immaterial matter regarding contracts, and so forth, "for any person to violate any order or requirement under section 202 (b)". In other words, it is specifically made a violation of the Act for the defendant not to comply with the requirements of section 202 (b).

Now I state that in fairness to the defendant, in fairness to your Honor, that it is our position—

and we have so followed the practice in other cases—in some cases we go directly to our criminal remedy where there has been refusal to obey the subpoena. [140] In other instances we seek the aid of a District Court. In this situation we have sought the aid of your Honor under section 202(e).

The Court: What do you do in other cases?

Mr. Cannon: In some other cases we have brought criminal prosecutions for refusal to honor a subpoena under section 4 (a). In other words, section 4 (a) says it shall be unlawful to refuse the requirements under section 202 (b) and 202 (b) is the section which provides—

The Court: You don't bring them. You ask the United States Attorney to bring them.

Mr. Cannon: That is correct, your Honor. Excuse me for that. I mean they refer them to the United States Attorney. They bring them not as they see fit.

The Court: Yes.

Mr. Cannon: But they have been brought; I will say that, your Honor.

The Court: Yes.

Mr. Cannon: And the only other observation I have to make, your Honor—and I hope your Honor will take this the way I mean it, as far as that is concerned—I believe in the significance insofar as the urgency of this matter of price control is concerned. As the plaintiffs here have said, the turkey season now is in a very important stage, so far as that is concerned to them, and also to us from

the standpoint of compliance; and we feel that we will do everything possible to assist your Honor in an expeditious and [141] proper disposition of this matter, and we feel that the provisions of the Price Control Act which relate actually to the expedition of cases does mean something. It was put in the Act after some consideration by Congress. And, as I say again, your Honor, I know you will take this the way I mean it, but I think I would be neglectful in my duty if I did not point out what I feel to be a pertinent provision of the Price Control Act, provided in section 205 (c), that any court shall advance on the docket and expedite the disposition of any criminal or other proceeding brought before it under the Price Control Act; and a very recent decision of the Circuit Court of Appeals for the Tenth Circuit, which was referred to in our brief this morning, I think gives a very fair interpretation of what Congress meant insofar as that particular section is concerned. Just two brief paragraphs of that opinion I would like to read in closing, with your Honor's permission.

“Recognizing that ‘of all the consequences of war, except human slaughter, inflation is the most destructive’ the Congress by enactment of the Emergency Price Control Act, expressed its purpose to stabilize prices in order to prevent wartime inflation and its causes and effects, by maintaining existing price levels. To effectuate the declared congressional policy the Act created an office of price administration under the direction of a price admin-

istrator empowered to fix and establish 'generally fair and equitable prices' for rents and commodities by appropriate regulations. The constitutionality of the broad and comprehensive [142] powers thus delegated to the Administrator is no longer open to doubt''.

There are set forth several Supreme Court cases.

"The objectives of the Act cannot be served unless courts promptly perform the judicial functions enjoined upon them by the Act. If the hardships"—and I think this is important—"If the hardships recognized by the trial court"—and this is the trial court in this particular case—"as constituting the basis for a denial of the injunction are disproportionate to the common burden of a wartime economy the remedy is adequately provided elsewhere in the Act (the exclusive jurisdiction provision) and not in the trial court. The complexities of the problem involved in such a gigantic undertaking renders judicial administration inadequate and inappropriate. In our judgment the public interest fully justified injunctive relief in respect to the adjudicated violations and the case is reversed and remanded with directions to issue an injunction''.

Your Honor, I say now with great caution, you certainly understand me when I make this sort of an argument, but I do feel actually that cases such as that and the provisions of the statute, should in fairness be pointed out to your Honor, because it is part of our duty to do what we best can to bring about the best enforcement and to bring to the attention of your Honor all statutes and cases which

we feel are relevant, and upon that I submit our argument on the order to show cause. [143]

The Court: Now let's just pull this thing together a little bit. At the outset let me tell you that you would be surprised how many statutes there are which wind up by saying just what this price control statute says, that enforcement of this statute shall be on the conscience, day and night, of all the United States District Judges, and that they should give immediate attention to all cases brought under this statute and advance them on the calendar. There is a whole host of those, so this is not a new experience, as it happens.

In this particular case we had to wait for you to get up here; we could not act the other day; and we had to wait for Miss Gallagher to go to La Grande; so now we are all here, and there is more speed behind us rather than ahead of us.

Now you have a number of administrative powers under the Act. You have made a demand on this man and he has disregarded it, and you could suspend his license, couldn't you?

Mr. Cannon: No, your Honor. The only way we could do that would be, first to send him a warning notice, which would set forth his violations. Then if he violated again we would have to come into court in a suit to suspend his license.

The Court: You don't have any administrative disciplinary remedy?

Mr. Cannon: No, your Honor. That is only in connection with rationing violations that we have



a right to hold a hearing to determine if a fellow should be suspended. [144]

The Court: Your remedies are criminal prosecution and injunctive relief, and those two things?

Mr. Cannon: In this case it would be simply either criminal prosecution, or making an application to your Honor insofar as the disregard of the inspection order is concerned. In other words, we could not very well bring our injunction suit unless we brought it on certain facts.

The Court: That is what you are aiming for eventually, when you get into his books and get the details on his violations.

Mr. Cannon: Oh, eventually, yes, the ordinary remedies of the Act would be available to us, provided we found violations.

The Court: He has told you he has violated the regulation. There is nothing to debate about. He has told you he disregarded G-93.

Mr. Cannon: Yes. As far as that is concerned, it is like any other case. If the case fits into the remedies, whatever would seem proper under the circumstances.

The Court: Those remedies are two, criminal prosecution and injunctive relief.

Mr. Cannon: Criminal prosecution if the facts warranted it, but if he violated we would first send him notice——

The Court: Yes, which he has done in the past—which he says here he has done, as to which Mr. Skulason the other day emphasized the responsibility—I am speaking of him personally all the time,

although I mean his company—Mr. Skulason emphasized here the [145] other day the responsibility of the concern for anything it may have done in the past. What you want now is detailed information and then when you get that you would take three possible steps to get anything: prosecute the concern criminally, or you could come in here for injunctive relief, or you could proceed to suspend his license by judicial proceeding, or lastly——

Mr. Cannon: Treble damage if he charged over the ceiling price, perchance.

The Court: Yes; if he, in other words, tried to get this cent back from the Government. Now then, most of the turkeys have gone to the Government, haven't they?

Mr. Cannon: Yes, your Honor; and they still are.

The Court: That is a matter of public record, then, what has been paid for those.

Mr. Norton: If your Honor please, there is a one hundred percent embargo, and has been ever since this G-93 went in.

The Court: You had better put him on now or we will get into a bad fix. If you want to go into this any further you had better present to me what Mr. Norton wants to say, and if you want to put him on again you may do so..

Mr. Cannon: He has already said that, your Honor, when he was on the stand, in regard to the embargo on the turkeys.

The Court: Yes.

Mr. Skulason: It seems to me, your Honor, we have made that clear. [146]

The Court: All right. Well, he used the word "embargo". I get it now, what he meant, but I didn't fully understand it until now. All the turkeys have gone to the Government, then, haven't they, except the degrades?

Miss Gallagher: Except the rejects.

The Court: Except the degrades. So if he has charged, if he has tried to get this cent back, taking Miss Gallagher's case, continuing her example, why, it has been from the army and the navy, whoever pays for them, and that is a matter of public record, isn't it?

Mr. Skulason: Perhaps I had better call him for a question or two.

The Court: All right. I just want to make sure we are not tilting at a windmill here, as often happens.

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### C. W. NORTON

was thereupon recalled as a witness in behalf of respondents in Civil No. 2565 and the plaintiff in Civil No. 2575 and, having been previously sworn, further testified as follows:

#### Direct Examination

The Witness: Your Honor, I would like to explain how this operates. The War Food Administration puts an embargo upon killing for 100 per cent of the turkeys to be delivered or sold to the

(Testimony of C. W. Norton.)

Quartermaster's Market Center or the headquarters of the Quartermaster Market Center at Chicago. Then they have branches all over the United States. Then in conjunction with the OPA, the War Food and the OPA set the prices on these particular turkeys. When we [147] have turkeys to sell we call the Quartermaster Market Center in Seattle and they tell us the price to charge them out on. If they are export package we are allowed 21 cents a box for export box, 10 cents for strapping, and so on, but the Quartermaster Market Center gives us those figures. I want to explain one thing about the grade, your Honor, and that is under the OPA they recognize the U.S.D.A. system of grading. The Army does not recognize anybody's grading except the Army's. A bird might be an A grade turkey and yet not be suitable for the Army; it might be on account of cleanliness, it might be too many pin-feathers, it might pass one grade and not the other.

The Court: You sold those for what the Army told you they would pay you for them?

A. That is correct; and that is a matter of public record.

Mr. Cannon: For the purpose of the record, I object to the testimony as incompetent, irrelevant and immaterial, and also hearsay. May there be a ruling on that?

The Court: What?

Mr. Cannon: I say, for the purpose of the record I object to the testimony on the ground it is incom-

(Testimony of C. W. Norton.)

petent, irrelevant and immaterial, and also hearsay.

The Court: Yes.

Mr. Skulason: Q. I think perhaps we have had this. The situation right now regarding your output of turkeys and the Army's requirements is what? [148]

A. Where it stands, we can't do anything until we get this cleared up. The growers are afraid to sell to us.

Q. But your turkey output is all taken by the Government?

A. All taken. It is a hundred per cent embargo, and will be until at least November 5th.

The Court: Now Miss Gallagher, you shook your head a while ago, and you can't question this gentleman, or you don't want to because you are not admitting jurisdiction here. What were you shaking your head about?

Miss Gallagher: It was your remark about tilting with a windmill.

The Court: I thought that was a pretty good remark.

Miss Gallagher: It was a good remark, but I don't think we are tilting with a windmill.

The Court: Whom could you have sold to other than the Army?

Miss Gallagher: Well, he has sold apparently to the Army. I don't know that he has testified as to what he has done with any that might have been rejected.



(Testimony of C. W. Norton.)

The Court: I will ask him. I will save you from having to take any part in this. Have you sold to anybody other than the Army?

A. Any turkeys that are rejected by the Army are subject to resale and we get a permit.

The Court: And you have sold those?

A. We have sold those.

The Court: There is a ceiling price on those?

[149]

A. There is a ceiling price on them, yes.

Mr. Skulason: Q. Some have been rejected?

A. Rejected by the Army. Ordinarily it is on account of sanitation, or something that way. It might be feed, or the head or pinfeathers.

The Court: Is that a big item?

A. No. It might amount to one per cent, possibly two per cent.

The Court: About one per cent of your handling?

A. That is right. Most of these turkeys——

The Court: That comes under the head of *de minimis non curat lex*.

Mr. Skulason: Might I ask him another question about what I stated to your Honor the other day about the responsibility of this client of mine?

The Court: Yes.

Q. What are the assets of your corporation?

A. We are incorporated for \$176,500.00.

Q. What is your corporation worth now?

A. Well, I really don't know what the book

(Testimony of C. W. Norton.)

value is right at the moment because the books were closed a year ago.

Q. Was it that much?

A. Equally that much; maybe more than that, yes, sir.

Q. Any obligations or liabilities?

A. No, sir.

Q. Stock paid up?                      A. Yes, sir. [150]

The Court: You had better step down, Mr. Norton.

Mr. Skulason: That is all.

(Witness excused.)

The Court: So that leaves what we are dealing with the overpayments to the growers, doesn't it?

Miss Gallagher: No, your Honor. We—wait. Will you say that again, so I will be sure I am not mistaken?

The Court: He has paid the growers, by your example, 1 cent more than he should, because he didn't charge enough for the processing.

Miss Gallagher: That is right. He may have overcharged the Government. He may have overcharged on the civilian sales.

The Court: How could he overcharge the Government? The Government told him what it would pay.

Miss Gallagher: The Government told him what the price is—what their price is.

The Court: Yes.

Miss Gallagher: There are many examples, a

great many examples of overcharges to the Government. Whether he has done it or not I can't tell you, but there are loads of sawdust, loads of gravel, lots and lots of everything sold to the Government at over ceiling prices. Processed foods and a lot of things we know about have been sold to the Government over ceiling prices. There is a ceiling price on stuff he can sell to the civilian trade.

The Court: He says the civilian trade is one to two per cent [151] of his handlings.

Miss Gallagher: It is a small part, no doubt.

The Court: Yes.

Miss Gallagher: It probably is a large proportionate part of the amount of turkeys going to the civilian trade, however, if Mr. Norton handles one-third of the turkeys of the State of Oregon. He is required to keep records of all his sales and all his purchases. I don't know what he is doing about having kept his records, or having kept them properly.

The Court: Well, I have no doubt he has kept records.

Miss Gallagher: I have no doubt.

The Court: Yes.

Miss Gallagher: Probably so, but we would like to look to see and to know that, your Honor. He may have overcharged rates on his export; we don't know; and we would like to know.

The Court: What export?

Miss Gallagher: He remarked that the Government tells him how much he may charge for Army,

how much he may charge for export, for boxing, for strapping.

The Court: Export to whom?

Miss Gallagher: Export by the War Shipping Administration, I imagine. I don't know to whom he sells. I don't know what he exports. I don't know how much he exports. Those are the questions, your Honor, we want to get to.

The Court: What do you export? [152]

Mr. Norton: For instance, today the Army requires all turkeys under 22 pounds be packed in an export box, wire-bound or stapled.

The Court: They go to the Army?

Mr. Norton: They go to the Army. The Army wants to ship them overseas. And those 22 pounds and over, they do not require strapping; they stay for local consumption.

The Court: Do I understand correctly the Army is taking all you are handling, except one to two per cent degrade?

Mr. Norton: They take all, except they tell us what they want to do with them. But the Quartermaster takes them all.

The Court: The Army?

Mr. Norton: That is correct.

The Court: Not the Navy?

Mr. Norton: The Quartermaster buys for the Navy.

The Court: All right; for the armed forces?

Mr. Norton: For the armed forces.

The Court: They are all going to the armed forces?

Mr. Norton: That is correct.

Mr. Cannon: Your Honor, should we be required to go to the Army, the Quartermaster's Corps in Seattle, or whoever may have kept the record of the invoices with Mr. Norton? Probably we should have sent to the Army and examined those records, or examined the records of the Army to find out how much Mr. Norton charged.

The Court: Did the OPA fix the ceiling prices of what the Army and Navy should pay for turkeys? [153]

Mr. Cannon: I don't know on turkeys. They have on other things.

The Court: Do you know, Mr. Norton?

Mr. Norton: Your Honor, the war Food and the OPA together set the price. As an illustration, they set up, they said for the month of July a 2-cent premium; for the month of August a 2-cent premium; for the month of September a 1-cent premium, and October—or for September a 2-cent premium also; then for October it went down to a 1-cent premium in order to get early turkeys. But it is a joint order between the War Food and the OPA. I have the copies of them if your Honor would like to see them.

Mr. Cannon: Your Honor, I might explain that. I think this is generally true. It may not be applicable here, insofar as the Government paying over the ceiling. Very frequently, as Miss Gallagher pointed out, there are situations in which parts of the Government have paid over ceiling prices, but



it was felt perhaps desirable, even though they should be liable for the regular remedies if they paid over the ceiling price, and perhaps sometimes that is why they are not as careful as they might be about the ceiling, because their primary concern is to get the commodity and get it to the place it is needed.

The Court: How about the whiskey the Treasury sold at Los Angeles over ceiling prices at public auction?

Mr. Cannon: I am afraid that is out of my jurisdiction.

The Court: You know about it, don't you?

Mr. Cannon: No, I don't. I am sorry. [154]

The Court: It was felt by the Los Angeles office the Act didn't cover such things. It just didn't cover a sale by one branch of the Government. The Treasury Department confiscated certain liquor in Los Angeles—not an unusual thing—put it up for sale at public auction, as the law requires in certain cases, and more was paid for it than the OPA ceiling price for that kind of liquor at that time; so the question was whether that was an actionable violation of the Price Control Act and the regulations thereunder, and it was felt that it was not, because the Government or an agency thereof was not named as a person under the Act. Now then, take the converse of that, a sale to the Government above the ceiling price, is that a violation? Suppose it is.

Mr. Cannon: Your Honor, excuse me; I hate to engage in discussion about the legal merits of the Los Angeles case. It was my general impression on similar matters we had a specific order which exempted judicial sales.

The Court: This wasn't judicial; a public auction.

Mr. Cannon: It may have exempted that sort of a sale, too. I don't know really about that, but I know certainly in all my contact with the OPA we have proceeded many, many times on overcharges and various——

The Court: The Bankruptcy Court wants to sell its property one of these days soon, I have heard, and I understand it wants to get all the money it can for creditors. Lord knows they need [155] it. The question was whether it is limited to the ceiling price for that particular kind of property. I have heard that discussed. Now here are the armed forces buying all the turkeys from the United States, and they say what they will pay for them. They tell the dealers, as a war measure, that they can't sell them anywhere else; and they haven't sold them anywhere else. Isn't it very likely a violation of the OPA regulations in such a transaction—in such a large and notorious transaction?

Mr. Cannon: I would say no question about that, your Honor, as far as that is concerned, that there is; that it specifically covers that type of sale.

The Court: That hardly was my question. My question was as a practical matter, is it likely that

here has been a violation of the OPA regulations that need seriously to concern you as an enforcement officer?

Mr. Cannon: In my opinion, without limiting myself to this case, I would say yes, your Honor. I know many, many cases in which there have been overcharges on similar transactions, and not only in regard to turkeys but particularly in regard to other commodities sold to the Government.

The Court: Well, I am talking about turkeys. A turkey is a fairly simple problem compared with cuts of meat. Right early under the OPA Act we had all the packers in here; I think that was one of the first cases we had under the OPA; and the charge was that they were evading the regulations by degrading. And you had an [156] automobile man down here. I don't call any names; I really don't know any to call; but an automobile repair shop, supposed to repair your car for not to exceed so much for this and not to exceed so much for that. Anybody who has had his car repaired knows as a practical matter these ceilings are not effective. You pay about \$100.00 for what used to cost you about \$25.00. So there will be a little of this and a little of that. That is within their power. There are some things you can't regulate, even in war-times or peacetime. But this turkey problem is a rather easy matter. A turkey is a turkey. And the Quartermaster says to Mr. Norton, "I will take twelve million pounds of turkeys from you in 1944": that is one-third of the Oregon production; "and I

will pay you the ceiling price fixed by the OPA and the War Food Administration." I would not think that in a large, notorious transaction like that it would be much of a field for investigation for evasion. I would think you would have to get the Quartermaster in here who was a party to it.

Mr. Cannon: Well, your Honor, my answer to that would simply be, if there is any possibility of it at all, even regardless of whether there are any violation, or likelihood of violations, we have a right to look at the records; and, after all, if everything is all right, what is the objection to letting us see the records? The law certainly requires that they be kept, and also gives the Price Administrator a right to see them and to copy them, and we feel very strongly that we should have a right to see the records [157] which he has.

The Court: Now I will tell you, we have worked around to something where we can really exchange some views to advantage.

There is in the background of all of these regulatory statutes a major question, so far as the courts are concerned, and that is this: Whether the Congress intends to, indeed whether it can, really make a rubber stamp out of the Court and say, "We are creating an administrative agency, and when they come up to you and tell you that John Jones has not done what they have demanded of him or required of him, or requested of him, you must give them an order on John Jones to do that, and if he then does not do it he is subject to a contempt proceeding and you must proceed to try him for that", incidentally

without a jury, perhaps, although that is another question, "and impose punishment on him."

That is a major question, so far as the courts are concerned, that is in the background of all these things. I take it that the United States Supreme Court, perhaps, it seems to me, for the first time in recent years, rather got the feel of itself as, a court in the case that your people pressed on it as to the issuance of injunctions. When your people pressed on them the claim made in that case it never had occurred to them before that even though they are an appellate court, and the highest appellate court, the claim there made tied their hands, too. If every District Court had to, on a showing of violation of the Act, without regard to willfulness, or without any consideration of the [158] circumstances, on request of the OPA had no discretion but to issue an injunction, which was the proposition that was advanced in the Hecht case, I think all at once the United States Supreme Court came alive to the fact that on such a claim they could not undo anything that had been done in a court below; if the lower court had issued an injunction in the Hecht case, which, as I remember, was a department store case in Washington, D. C., where the proprietor was really trying to find out what it was all about and doing the best he could; he had a large number of clerks, green clerks; and I think for the first time it occurred to them that if this construction of the law were yielded in a case that seemed very inequitable to them, when it got up to them on appeal by the citizen they could not do anything about it,



either. It is all right to sit at the top of the heap and say that the fellow down at the bottom should go along and follow the letter of the statute, but all at once the question pops up to the top and a broader realization of the question that is involved in administrative laws of the country presents itself.

Now take the condemnation statute, there is a lot of new ground being broken there. A lot of questions remain to be settled. It is pressed on the District Judge all of the time—the pressure is going off a little now, but there has been an enormous number of condemnation cases—that he is no more than a rubber stamp; that when the Public Lands Division of the Department of Justice comes in and says, “We are making a formal showing [159] of the need of the Government for possession of the property”, that the Court must grant such an order of possession, despite the fact, as in one instance which comes to me—many others could be recalled—that thirty or forty families were about to be put out in the snow down in the little town of Bandon, the place that had burned out not a great while before and not much housing had been restored. In the middle of the winter thirty or forty families were to be put out without notice—the aged, women and children, some of them sick. No inquiry could be made into the circumstances; “No, you must sign the order”, regardless.

Now here we are in the enforcement of the Price Control Act, and I am glad to be able to recall the sentence of Justice Douglas in the Hecht case, that

not just the OPA agency is charged with the highly important duty of attacking the evil of inflation—that the courts themselves may be trusted to be equally alert to the needs of the time and the urgencies of the situation; which means no more than this, when you boil it down: You, as administrators, exercise your discretion every day as to whom you will proceed against and whom you don't. You could not do any other way. The statute does not say that you must in every case bring a criminal proceeding against every violator. That would not do. That would be “gestapo” such as the world has never seen or heard of. So just because you very energetic people find a case that you think calls for an investigation or a certain action, when you come in to me and you ask me to do something about it, I claim, [160] and always shall claim until somebody bumps my head about it, that I have the same right to look at the facts and exercise my judgment, even to the extent of disagreeing with you as you exercised your judgment and discretion in the first instance.

That is the great thing about the criminal side of it. There is no way in the world to take away, fortunately, from the citizen the Anglo-Saxon heritage that in the long run twelve men and women are going to decide the whole thing in the criminal prosecution. I could sit here until I was black in the face and tell them what their duty was about finding somebody guilty, and I have been expecting any one of these days in the draft cases where no

defense is even made, the man simply comes in and demands his trial, dozens and hundreds—I have been expecting the jury a good many times to go right upstairs and come back and hand me a verdict of “Not Guilty,” where I just got through telling them they must find that man guilty.

So there are these cushions in our judicial system, and they have deep roots. They go back to antiquity. And so the party that invokes the aid of a court, whether it be the Government, which happens to be the party in the major number of cases, and has been for many years in the federal courts, and will be increasingly so, when he invokes the aid of the Court he invokes “judicial action,” and implicit in those words “judicial action” the Court is doing what? Exercising legal discretion, which in the long run means doing what the Court thinks is right and just [161] and necessary under all the circumstances.

So I say that I think I am just performing my simple duty in finding out what this or any other case is about, reducing it to fundamentals; and I am not impressed that, the turkey business having been taken over, so far as the purchasing end of the finished product is concerned, by the armed services, there is any practical field for inquiry there as to possible evasion of the Act. If there were we would have the anomaly—well, I will just leave it there. We would have a very unusual situation. So this matter here reduces itself, as far as I am concerned, to whether or not this com-

pany, by declining to observe the order about processing, has paid to growers more than it should.

Now we have heard this afternoon that a device is going to be set up whereby a rebate can be made to the grower so as to put this plaintiff on the same basis as the cooperatives are. I suppose that information is new to you, is it?

Mr. Cannon: Yes, your Honor. If I may interrupt—excuse me.

The Court: Yes.

Mr. Cannon: Perhaps I didn't make this clear. It is not our position that your Honor has no discretion in regard to the issuance of the order to show cause to inspect the records. It is our position that the defendants have shown no facts at all from which your Honor could exercise discretion to refuse it. In other words, if the Price Administrator had gone out there and said, "Let us through all certain accounts and records which the Act does [162] not provide to be kept," of course the District Court would have discretion to say to the Price Administrator, "You can't go out there and serve a requirement for the production of certain records which the Price Control Act does not require him to keep," and if there was any other evidence to show the Price Administrator had not acted properly in pursuance of the Act I certainly believe, and say without hesitation, your Honor would have discretion. It is just the type of case which Congress had in mind, in which your Honor should and would invoke discretion. Our position is it is clear. It is not denied the inspection requirement was in

accordance with the section of the regulation and defendant refused to permit examination of the records, and on that it is our position there are no facts which would justify your Honor in refusing to grant the order.

The Court: You have pretty full information now, given here this afternoon, as to what this company has done. It has done all of its business over whatever period you are interested in, in disregard of G-93, and it has continued to pay these prices per head the same as it did in the past, and it tells you how much business per year it does in turkeys, both in dollars and percentage of birds, and if you think that calls for either an injunction proceeding or a penalty case, you have ample material, it seems to me, to file a complaint, and and when you file a complaint in this Court you have all of the rights of discovery that our rules of procedure give all litigants, which has been found very [163] ample; so why don't you sue him if you believe he is a violator? He has invited you to sue him because he is responsible.

Mr. Cannon: You want me to answer that, your Honor?

The Court: If you want to. You don't have to.

Mr. Cannon: Well, the only thing is, I am in a little bad position to answer that, why we don't sue a man on the basis of what is in our information, from very incomplete information as to how he has been conducting his business. Certainly I think your Honor would agree perhaps on our part it would be a little bit premature to jump into a suit,



particularly of a criminal nature, especially where we are not absolutely sure of what the man has been doing, and it certainly seems to me it would be only fair we should have a right to see his records first to see what, if anything, he has done.

The Court: I wonder if you have a right to go into a man's records if he protests, primarily to criminal prosecution.

Mr. Cannon: Well, of course it is our position we do, your Honor.

Miss Gallagher: The Price Control Act grants immunity.

The Court: How about the Constitutional guaranty against self-incrimination?

Mr. Cannon: Well, your Honor, specifically this would lead us into a rather long discussion. There are certain provisions in the Price Control Act which relate to that, as to the fact that the claim of self-incrimination shall not be valid, but, nevertheless, [164] certain immunities from the Compulsory Testimony Act of such and such a year should be applicable.

The Court: I am talking about Constitutional guaranties against self-incrimination.

Mr. Cannon: Yes, sir. That is the section of the Act that is put in to protect these Constitutional guaranties.

The Court: You can bring a proceeding before a grand jury—I am not an expert in criminal law. All my colleagues are. I am getting on bad ground. I will just state what I understand to be fundamentally true. You can bring anti-trust proceed-

ings before a grand jury and you can issue a subpoena to a man to come in and bring his books and records, but you can't do it as a basis for getting information for prosecuting him.

Mr. Cannon: Your Honor, in that connection, probably our discussion——

The Court: Lots of times he comes in and coughs up before he gets counsel, or in the hope he will get immunity and somebody else will be indicted, but you can't move directly against a man, if I understand the Constitution correctly, to make him convict himself.

Mr. Cannon: The applicable section, your Honor, is section 202 (g) of the Price Control Act, which provides: "No person shall be excused from complying with any requirements under this section"—that is about testifying or giving us certain records—"because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, [165] shall apply with respect to any individual who specifically claims such privilege."

The Supreme Court has specifically held, time after time, that is sufficient protection under the Constitution.

The Court: Go on and be a little plainer. You can't prosecute him on information he has given?

Mr. Cannon: The law is equally open to defendant's interpretation, by defendant's counsel, as by me. That is what it says.

The Court: Well, isn't that what that says?

Mr. Cannon: That is right.

The Court: That he gets immunity if he claims his Constitutional guaranty against self-incrimination.

Mr. Cannon: "but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege."

The Court: In other words, you can't prosecute him if he claims privilege. We understand each other. So where does that bring us? We have had here this afternoon admission by the man in the courtroom he does all of his business in disregard of G-93. You say you want more than that?

Mr. Cannon: Yes, your Honor.

The Court: And you said a minute ago you wanted more of it perhaps as a basis for criminal prosecution. That is what provoked this discussion.

Mr. Cannon: To be clear on that, I am not to be taken as [166] threatening any sort of prosecution at all.

The Court: I know.

Mr. Cannon: I mean, I am wanting the records to find out the facts, and unless we know the facts we have to determine the best we can as to what should be done.

The Court: The difference between you and me is, I haven't developed any information this afternoon that is satisfactory to you ladies and gentlemen; that is, sufficiently satisfactory. To me, if I were where you are I would go down and draw up a complaint tomorrow. I would not think I could get any more by looking at the man's books. I

would say, "The defendant, between certain periods, has been disregarding G-93 and has sold approximately so many hundred thousands of turkeys to the Quartermaster, and for approximately a certain amount."

Mr. Cannon: In view of that, if your Honor feels that we haven't shown what we should show, then I do submit your Honor should have refused our motion that we have made in the case, and in regard to the production of records.

The Court: You feel what?

Mr. Cannon: In other words, I feel if we have not made out our case, of course that your Honor should not issue the order.

The Court: That wasn't what I stated, Mr. Cannon. What I said was, what it comes down to is, there has not been developed here information that seems sufficient and satisfactory to you and Mr. Wagner and Miss Gallagher. [167]

Mr. Cannon: Yes, sir.

The Court: Put on your other testimony, Mr. Skulason.

Mr. Skulason: Mrs. Spath.

MRS. LEONARD SPATH

was thereupon produced as a witness in behalf of Respondents in Civil No. 2565 and the Plaintiff in Civil No. 2575 and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Skulason:

Q. You have the name of the witness?

A. Mrs. Leonard Spath.

Q. Martha Spath? A. Yes.

Q. Where do you live?

A. We live at 11382 Southwest Capitol Highway.

Q. That is near Portland here, is it?

A. Yes.

Q. Are you married? A. Yes.

Q. What is the name of your husband?

A. Leonard.

Q. What business are you and he in?

A. Turkey business.

Q. Have you been in that for some time?

A. Ten years. [168]

Q. And to what extent, generally speaking?

What volume? A. About three thousand.

Q. On the 24th of last month did anyone call on you purporting to come from the OPA?

A. Yes.

Mr. Cannon: I object to that—excuse me, your Honor—on the ground it is incompetent, irrelevant and immaterial. And likewise, if counsel will agree, I will object to all other testimony by this witness on the same line.



(Testimony of Mrs. Leonard Spath.)

The Court: Admitted subject to the objection.

Mr. Skulason: Q. Did you learn the person's name?

A. Yes. Mr. Rodeback.

Mr. Skulason: Mr. Rodeback. Your Honor will remember he testified here in this case.

Q. Did he say anything to you about selling turkeys to Mr. Norton's company? A. Yes.

Mr. Cannon: I object to that, your Honor, on the ground it is incompetent, irrelevant and immaterial. Even assuming that your Honor has jurisdiction to pass upon the validity of the regulation, that could conceivably have no bearing on the validity of the regulation, as to what Mr. Rodeback told her, plus the fact it is also hearsay.

The Court: Do you know what he told her?

Mr. Cannon: I say it has no materiality whatsoever. [169]

The Court: I want to know, do you know what he told her?

Mr. Cannon: Why, I certainly have no idea.

The Court: I have heard what he told her. I think you will be interested in it. Go on and tell. Objection overruled. You can't tell what the answer is going to be. I think you will be a little surprised.

Mr. Skulason: Q. You say he did talk to you about selling turkeys to Mr. Norton?

A. Yes. He told us we should not sell Mr. Norton any more turkeys, because if we did the OPA would come back on us and we would have to pay that difference in price.

(Testimony of Mrs. Leonard Spath.)

Mr. Cannon: I object to that and move to strike it out.

The Court: The motion is denied. I don't want any cumulative testimony. Just put on one witness.

Mr. Skulason: Yes.

Q. Did he say anything about Mr. Norton and his business practices?

A. Yes. He said he was a rebel, and he was a cheat, and he undergraded.

Mr. Cannon: I make a motion that that be stricken out as hearsay; also incompetent, irrelevant and immaterial.

The Court: The motion is denied.

Mr. Skulason: Q. Did he use any other expressions about him?

A. Yes. He called him a renegade.

Mr. Cannon: The same objection.

The Court: The same ruling. [170]

Mr. Skulason: Q. Anything else?

A. I can't—(witness pauses).

Q. Did you write, you and your husband reduce to writing what you are now telling us about?

A. Yes. Mr. Spath wrote down the things that he told him.

Q. And did you and he sign that? A. Yes.

Q. And was that statement true?

A. Yes, that is.

Mr. Skulason: We ask that the witness be allowed to see this letter to refresh her memory.

(Paper passed to the witness.)

(Testimony of Mrs. Leonard Spath.)

Q. What is this that you are shown now?

A. This is the letter that my husband wrote.

Q. When?

A. On the 24th of September.

Q. Is that the date Rodeback was there?

A. Yes.

Q. And will you look at that, please, and state whether or not that is true, what is in there.

A. Yes, that is true.

Q. Is that your signature to it? A. Yes.

Q. And your husband's? A. Yes. [171]

Q. And who wrote it, first?

A. Mr. Spath did.

Q. In longhand? A. Yes.

Q. Or on the typewriter?

A. In longhand.

Q. Then how was it reduced to typewritten form?

A. He took the longhand up to Mr. Norton's office and his secretary did it.

Q. Have you the——

A. The original? Yes.

Q. Have you the original writing?

A. Yes. Uh huh.

Q. With you? A. Yes.

Q. Will you produce it?

A. He just wrote it just on a piece of paper.

Q. That is what you have now, is it?

A. Yes. Uh huh. It is the same thing.

Mr. Skulason: The same thing. I offer these two documents in evidence, your Honor.

(Testimony of Mrs. Leonard Spath.)

Mr. Cannon: Well, just a minute.

The Court: I don't want them in the record. They are rejected.

Mr. Skulason: All right.

Q. Now having read the two letters you have there and refreshed [172] your memory, will you state whether or not Mr. Rodeback used any other expressions about Mr. Norton and his business than those you have told us about.

A. He called him a rebel, a cheat, and called him very dishonest, and also he called him a renegade.

Q. And what about weights and underweights?

A. Yes. He said he gave us also underweights, and also undergrads.

Q. What about his honesty?

A. Well, that he wasn't an honest man.

Q. And about selling turkeys to him, did he say anything further than what you have said?

A. Well, he said that we should not sell to Norton but to sell to Columbia Produce, that we would get an honest grade and an honest weight.

Mr. Skulason: You may cross examine.

Mr. Cannon: No cross examination.

Mr. Skulason: That is all, Mrs. Spath.

(Witness excused.)

Mr. Skulason: Just one brief witness, if your Honor please.

## THAD R. PERRY

was thereupon produced as a witness in behalf of Respondents in Civil No. 2565 and the Plaintiff in Civil No. 2575 and, having been first duly sworn, testified as follows: [173]

## Direct Examination

By Mr. Skulason:

Q. Your name, please?

A. Thad R. Perry.

Q. Where do you live? A. Seattle.

Q. What is your business?

A. Wholesale produce.

Q. Do you handle turkeys? A. Yes, sir.

Q. How long have you lived in Seattle?

A. Since July 6th, 1902.

Q. How long have you been in that business?

A. Thirty-eight years.

Q. In handling turkeys and other poultry?

A. Yes, sir.

Q. And what are you, an independent dealer or a member of a cooperative? A. Independent.

Q. Are you engaged in the same line of business as Mr. Norton's company? A. I am.

Q. And have you been notified under that order G-93?

A. Everybody in business is amenable to it that is supposed to be.

Q. Everybody in Washington? [174]

A. Yes.

Q. And have you been complying with it?

A. Not one hundred per cent, no.



(Testimony of Thad R. Perry.)

Q. What can you tell us as to what the business practice has been in the State of Washington in recent years in regard to the processing of turkeys and selling them?

Mr. Cannon: I object to that as incompetent, irrelevant and immaterial.

The Court: Admitted subject to the objection.

Mr. Skulason: You may answer.

A. The turkeys have been dressed up till a few years ago, primarily by the rancher on the farm. The last few years, why, a few independents and cooperatives both have established turkey dressing stations in the country to give this service.

Q. And before this order came out on what basis, per head or pound basis, did you handle the turkeys?

Mr. Cannon: I object to that, your Honor. May we have the same stipulation here, that all other questions will be objected to on the same grounds?

Mr. Skulason: It may be stipulated.

The Court: The same ruling. Admitted subject to the objection.

Mr. Cannon: I am trying to save time, to have it agreed we will make the same objection.

Mr. Skulason: If we have anything to say about it, your Honor, we agree to that. [175]

Mr. Cannon: Well——

Mr. Skulason: Q. Now then, the question was, on what basis, per head or per pound basis, the custom has been handling turkeys in the State of Washington?

(Testimony of Thad R. Perry.)

A. Well, that has varied over a period of time. Last year we charged 30 cents straight across for hens and toms, and this spring we charged 30 and 35, according to this directive when it came out about the 2nd or 4th of May.

Q. Previous to that what did you charge?

A. 30.

Q. And always on the per head basis?

A. Always per head; never any other way.

Q. Now will you tell us what difference it makes to the trade, if any, to put the loose and boxed turkeys on a per pound basis?

A. All right. You take a 14-pound hen turkey and the charge for that, if we charged 30 cents for the dressing of that bird that is very easily computed. If we took that 14-pound hen turkey and changed it over to the  $3\frac{1}{2}$  cent charge, which was required in G-93, 3 times 14 is 42 and 7 is 49 cents. That would be 19 cents more than what we were charging before.

Now you take it in the month of May when breeder turkeys were offered, we received this directive on the 10th day of May, May 9th, and on the 11th day of May we filed a protest regarding this and in the letter we stated that we had the day before, the 2nd, on the day before, dressed tom turkeys that averaged 35 pounds [176] apiece. Those turkeys, if we had charged 35 cents for them that is easily computed, but if we had to switch over to the pound basis and had charged  $3\frac{1}{2}$  cents a pound, or 3 cents a pound, that would be \$1.05. Now there

(Testimony of Thad R. Perry.)

we would raise our charge, we would have to raise our charge to the shipper from 35 cents to \$1.05, which we rebelled. We said that we did not wish to be a party to a confiscation of a farmer's property.

Q. What effect would it have upon your business in obtaining turkeys if you had to make that charge?

A. Well, there has never been a directive, national or regional, that has ever been issued in the Northwest pertaining to any agricultural product that we know of that has created the furors that this has.

Q. Who would be the loser under this order?

A. It is a Ripley's Believe It or Not. I never heard of a case where the business fraternity or the business houses have gone into Court kicking because the Government, the OPA or any other department of the Government, had awarded them too much profit. That is exactly the position of the businessmen today in this field. We don't care to be a party to robbing the farmer. If we follow this directive, why, the farmer would be the loser, of course.

Q. Yes. This does not apply to cooperatives, however?

A. Cooperatives? No. Monday morning, the morning that I got this directive, I called up a sales agent for a cooperative in our district and I says, "Have you heard about this new directive, [177] G-93?" And he says, "No. What is it?" I read

(Testimony of Thad R. Perry.)

it to him. It was short. I said, "What is your disposition about that? Do you think that is fair, or do you feel like offering a remonstrance?" He says, "Why in hell should we offer any objection to it? If it is too much we refund it to the producer in the form of dividends, so he isn't out anything at all, through our membership." And so they haven't.

Q. Can you tell us how many pounds of turkeys are processed in the State of Washington per year?

A. No, I am not certain. There isn't as many as Oregon, but one-third of the turkeys raised in the whole United States I understand are raised in the three states of California, Oregon and Washington, and it is a very large number.

Q. Yes. And what proportion of the turkeys can you tell us in round numbers is being handled by cooperatives in Washington?

The Court: Are you going to miss your train?

Mr. Cannon: Your Honor, I hate to do this. I have to catch a plane at 4:25. I don't want to miss it but I want to be here at the end. I don't know how much longer it will be.

The Court: Wind this up.

Mr. Cannon: I will stipulate he will testify the same as the other fellow.

Mr. Skulason: I will certainly accommodate counsel, if I can. Will you read the last question.

The Court: He has to catch an automobile to go to the airfield. [178]

(Testimony of Thad R. Perry.)

The Witness: On that question about that relative amount the co-ops handle?

Mr. Skulason: Yes.

A. Well, I would say something like probably two-thirds.

Q. Mr. Perry, you have had long years of experience in this line. Are you an officer of some corporation handling turkeys?

A. My own firm, my own business, Perry Brothers. My own name is the head of it. I am an officer and it is a family affair.

Q. Well, could you carry on your business if this order were enforced and you were compelled to obey it?

A. I would not have very much turkey business very long. The producers would—in fact, one or two of them we know of now are putting in their own dressing plants. They are going to try it out.

Mr. Skulason: You may cross examine.

### Cross Examination

By Mr. Cannon:

Q. One question. You said that you had not complied with the regional order G-93; is that correct?

A. In the 30 and 35 cents, the charge for the kill and haul, we did comply with that, but that only applies up to the point that a turkey goes into the cooler. Just as soon as you stick it in a cooler box the directive says you can't charge that any more; you have got to switch over to a pound basis, and we haven't complied with that. [179]



(Testimony of Thad R. Perry.)

Q. You haven't, although you knew that the order required that?

A. We knew that the order required that. That is right.

Mr. Cannon: That is all.

Mr. Skulason: That is all.

(Witness excused.)

Mr. Skulason: That is all of our case.

The Court: Nothing more on the other side?

Mr. Cannon: That is all.

The Court: Now on your injunction proceeding, Mr. Skulason——

Mr. Skulason: We are here on both cases together, I understand.

The Court: I know, but I am talking now solely about your injunction proceeding.

Mr. Skulason: Yes, your Honor.

The Court: The case you brought as plaintiff.

Mr. Skulason: I understand.

The Court: Your motion for a temporary restraining order is denied. I reserve ruling on the defendant's motion to dismiss. I am not persuaded that jurisdiction was restored by the amendment, 2 (m). Is that what you call it, 2 (m)?

Mr. Skulason: Yes.

The Court: The case will ride on the calendar and any further light that is available by either party will be welcomed by me. As to the Government's, or, rather, the OPA's proceeding for the order directed to Northwest Poultry and Dairy Products Company, [180] I reserve decision on that.

We will adjourn until ten o'clock tomorrow morning.

(Thereupon, at 4:05 o'clock P.M., court was adjourned.) [181]

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[Title of District Court and Cause.]

### REPORTER'S CERTIFICATE

I, Alva W. Person, hereby certify that on Friday, October 6, 1944, I reported in shorthand the oral proceedings had and the evidence given in the above entitled matters before the Honorable Claude McCulloch, Judge, and that I subsequently caused my shorthand notes to be reduced to typewriting, and the foregoing and hereto attached transcript, pages numbered 54 to 181, both inclusive, constitutes a full, true and accurate record of all of [182] said oral proceedings had and evidence given upon said hearing on October 6, 1944, in said matters.

Dated at Portland, Oregon, this 20th day of October, A. D. 1944.

ALVA W. PERSON

Court Reporter.

[Endorsed]: Filed Nov. 10, 1944. [183]

[Title of District Court and Cause.]

Portland, Oregon, Thursday, November 9, 1944  
10:05 o'clock A. M.

Before: Honorable Claude McColloch, Judge. [184]

### PROCEEDINGS

The Court: Mr. Wagner.

Mr. Wagner: If your Honor please, we have pending, as I understand it, from your Honor, last Monday, the two cases, Northwest Poultry and Dairy Products Company v. Bowles, and also the Administrator's case, Bowles v. Northwest Poultry and Dairy Products Company, the latter of which is asking for an order requiring the production of documents. I don't know which order the Court wants to take those up in. I would like at this time, however, to introduce to the Court Mr. William B. Wetherall, from the San Francisco office, who is in Mr. Cannon's office, and we would like permission of the Court to have Mr. Wetherall appear of record, and a motion for his admission to the Court has already been filed.

The Court: Yes. We will try the case in which Mr. Skulason appears for the plaintiff. That is the case we will try this [185] morning.

Mr. Skulason: Yes. That is referring to those two cases?

The Court: Yes.

Mr. Skulason: The show cause matter comes first, I believe?

The Court: Why?

Mr. Skulason: The application to show cause I think comes first.

The Court: Give me the file. That was filed first and we haven't been discussing it. What do you mean, the application for production of documents?

Mr. Skulason: No. For permission to examine our records and books.

The Court: Well, just lay that aside and we will try the case in which you appear as plaintiff now.

Mr. Skulason: Very well, your Honor. The Court then is taking jurisdiction in that case, of course?

The Court: Will you say that again?

Mr. Skulason: We are prepared to go ahead with that case.

The Court: Yes.

Mr. Skulason: Now may I say this, reminding your Honor that we had a hearing here and called several witnesses and their testimony has been transcribed.

The Court: Yes.

Mr. Skulason: And I don't wish to go over that ground again.

The Court: No. That is part of the case. [186]

Mr. Skulason: That is part of the case?

The Court: Yes.

Mr. Skulason: Well then, we are ready to go ahead.

Mr. Wetherall: If your Honor please, if I might interrupt a moment here, in regard to the so-called 2 (m) case, which I understand——

The Court: What 2 (m)? I don't know what that means.

Mr. Wetherall: In other words, a declaratory judgment case.

The Court: That is the one you are bringing?

Mr. Skulason: Yes, your Honor.

Mr. Wetherall: I think we should call your Honor's attention at the outset here to a recent opinion of Judge La Buy, of the Northern District of Illinois, which holds that the exclusive jurisdiction provision in Section 204 (d) of the Emergency Price Control Act is not effective, affected by Section 2 (m) of the Act, which is of course relied upon by the plaintiff in the case which is now coming up for consideration. We have handed a copy of the Court's opinion in that case to counsel for the plaintiff and we should like to pass a copy up to your Honor at this time. This action is fairly in point and, so far as it affects the present case, constitutes a clear and direct authority for the proposition that this Court has no jurisdiction to entertain any question regarding the validity of any price regulation or order in a matter of this kind.

Now I should like to enter into a more detailed dis- [187] cussion of the opinion here.

The Court: What is the status of the pleadings? I have the wrong case here, the wrong file. What is the status of the pleadings in this case?

Mr. Wetherall: In this matter we have presented, your Honor, a motion to dismiss the complaint.



The Court: I reserved ruling on that, didn't I?

Mr. Wetherall: Yes. I believe you took that matter under submission.

The Court: If you have never answered right that is your own fault.

Mr. Wetherall: That is correct.

The Court: Mr. Wagner told me informally the other day, or you said in court here the other day, that that is the only pleading you expected to put in?

Mr. Wagner: That is right, your Honor.

The Court: Yes. So that should I—all right. Now you want to be heard further as to the jurisdiction point?

Mr. Wetherall: I would appreciate it, yes, sir.

The Court: Go ahead.

Mr. Wetherall: In this connection, *Illinois Packing Company v. Defense Supplies Corporation*, the plaintiff set a declaratory judgment under Section 2 (m), which is the very provision relied upon by the plaintiff in this case, declaring invalid a certain provision contained in the regulations promulgated by the [188] *Defense Supplies Corporation* governing the payment of subsidies to meat slaughterers.

The regulation involved was Regulation No. 3 of the *Defense Supplies Corporation*, and Amendment 2 of that regulation provided for the payment of extra compensation in addition to what is commonly referred to as base compensation in the form of subsidy to slaughterers of meat, and this extra compensation was allowed for non-processing, or

to, rather, non-processing slaughterers, and the rate there was 80 cents per hundredweight in addition to the regular compensation.

Now the amendment to the D.S.C. Regulation contained certain definitions of non-processing slaughterer, who, if the definitions were complied with, would be entitled to the extra subsidy.

The term non-processing slaughterer was given a certain definition, which I think we need not go into here in any detail, but the non-processing slaughterer had to be under these definitions an unaffiliated slaughterer and an unaffiliated slaughterer was defined in the regulation as follows:

“Unaffiliated slaughterer means”—and I am reading, your Honor, from page 2 of the Court’s opinion in the Illinois Packing Company case—“Unaffiliated slaughterer,” line 5, “means a slaughterer who does not own or control a processor or purveyor of meat and who is not owned or controlled by a processor or purveyor of meat. Unaffiliated slaughterer shall not include [189] any institution, representative or agency of Federal, state, or local governments.”

Then in subparagraph 4 of line 11 of the opinion, it reads:

“Own or control means to own or control, directly or indirectly, a partnership, equity, or in excess of 10 per cent of any class of outstanding stock, or to have made loans or advances in excess of 5 per cent of the other persons monthly sales.”

Now it was this latter paragraph No. 4 which was called into question in this proceeding. The Defense

Supplies Corporation had paid out subsidies in the amount of more than \$300,000 to the Illinois Packing Company and then when it appeared that the Illinois Packing Company had not qualified as a non-processing slaughtering, within the meaning of the D.S.C. Regulations, the Defense Supplies Corporation commenced to withhold subsidy payments and to compel them, as an offset against the payments which had already been paid out.

Now it so happens, as appears from the opinion, that the packing company finally disposed of more than 10—rather, that the ownership of more than 10 per cent of the stock which had been held by a processor or purveyor of meats, so as thus to disqualify the company from claiming extra subsidy, was finally disposed of in May of 1944, so that thereafter D.S.C. admitted that the company was entitled to the extra subsidy [190] but it withheld its subsidy—as I say, applied it as an offset against subsidy payments which had already been made.

This suit, then, which was brought under Section 2 (m) of the Emergency Price Control Act, sought to have the Court declare invalid this particular definition which I have just referred to upon various grounds.

The Court has found that the subsidy payment was made pursuant to Section 2 (e) of the Emergency Price Control Act, which does relate to subsidies. It then found—I neglected to state that defendant had filed a motion to strike the complaint based on the jurisdictional ground, and the Court in granting that motion and holding that it had no jurisdiction to hear the matter, found, as I have in-

dicated, that the subsidy had been paid pursuant to Section 2 of the Emergency Price Control Act. It then found that Section 204 (d) of the Act, which we commonly refer to as the exclusive jurisdiction provision, applied to this case, and then the Court proceeds to point out that unless jurisdiction is offset by Section 2 (m) the Court, under Section 204 (d), does not have jurisdiction to entertain the matter.

If your Honor will turn to page 6 of the opinion, line 3, the opinion reads: "Under the plain language of Section 204 (d) this Court has no jurisdiction to pass upon the validity of such regulation unless that power is conferred upon the Court by Subsection (m) of the amendment of Section 2 of the Emergency [191] Price Control Act of 1942, which provides as follows."

Then the Court concludes, dropping down to line 19:

"The Court has considered the language of this sub-paragraph and is of the opinion that it does not confer jurisdiction upon this Court to pass upon the validity of the regulation in question. The Court is impelled to the above conclusion for the following reasons."

Now the Court thereafter sets forth, I believe, six reasons in support of its conclusion of law, and of course finally declines to entertain jurisdiction.

Now so far as the Court's reasoning is concerned, I don't know that it is necessary at this time to go into that at any detail. As a matter of fact, we could enlarge upon the reasoning contained in the

opinion, as has been done already, I believe, in previous hearings in this matter. The Court does point out—I think this is the section—that under Section 2 (m) the Court has jurisdiction to consider only whether particular acts, or failure to act, on the part of the Government officers or agencies, are unauthorized under the pertinent regulations.

The Court specifically points out that it has no jurisdiction to consider the question of validity of the regulations themselves, and in that connection makes this important observation. The Court points out that the basic and underlying purpose of Section 204 (d) is to preserve uniformity in any [192] interpretation of the important provisions of the Emergency Price Control Act; rather, I should say, the regulations pursuant to the Emergency Price Control Act, in order that we wouldn't have a multiplicity of varying interpretations of our regulations, depending perhaps upon a number of courts which might entertain questions of validity.

Judge La Buy, in this case, points out that in vesting District Courts with the declaratory judgment jurisdiction under Section 2 (m) to consider whether Government officers are imposing unlawful conditions or penalties Congress was aware of the basic purpose of 204 (d) and that Section 2 (m) does not destroy that purpose but rather limits the Court to a consideration, whether under the facts in the particular case numbered under 2 (m) a Government officer or agency has in fact exceeded its authority under its applicable regulation, or whether it has attached some unlawful condition or penalty



to the payment of a subsidy, and that sort of thing, and that to permit the courts to decide questions of that kind in no way affects the fundamental purpose of Section 204 (d) to preserve uniformity in regard to questions of validity. I think that is an important consideration.

Now we have already indicated to the Court our position in regard to Section 2 (m). I might summarize that briefly.

In the first place, you will note that Section 2 (m), which incidentally is quoted in the opinion in this Illinois [193] Packing Company case, for your Honor's convenience at page 6 of the opinion. The section applies, in the first place, only to three limited classes of cases, or types of cases; one, cases where payments are to be made by some Government agency. Now that specifically refers to a subsidy matter. Two, cases involving contracts for the purchase of commodities by the Government; and, three, cases involving allocation of materials or facilities for fixing of equities.

Now it is to be noted that none of those three classes of cases involves the prices which may be charged for commodities.

The section, then, at the outset, does not pertain to price regulations. And, further, as I have indicated, and as is pointed out by the Court in the Illinois Packing Company case, the jurisdiction of the Court is further limited to a consideration, not of the validity of any regulation involving these three classes of cases which I have indicated, but to consideration whether any Government officer or

agency has, in applying those regulations, imposed some condition or penalty which is not authorized by the applicable regulation. Now that, I submit, falls far short of vesting the Court with authority to consider the validity of the regulation itself.

I believe at the previous hearing an example was given as to how Section 2 (m) might apply. I think this case which we have just cited and discussed gives us a still further example, and I might say a living example of how Section 2 (m) [194] is to apply, and the Court in pointing out the difference between a question involving the validity of a regulation and a question as to whether a particular officer exceeds his authority in applying the regulation, the Court in pointing out that distinction says this:

If, in the case here brought by the Illinois Packing Company, the plaintiff had merely contested the fact whether 10 per cent or more of its stock was owned by a processor or purveyor of meats, that would have presented a factual question of purely local significance, which the Court would have had the jurisdiction to pass upon. In other words, the Court could have decided the fact whether the Defense Supplies Corporation's agent had exceeded its authority under the Defense Supplies regulation in holding that this particular applicant was not qualified under the regulations for the subsidy, inasmuch as more than 10 per cent or more of its stock was owned by a processor or purveyor of meats.

Now that would have been a factual question, of purely local significance, which the Court could

have decided, but in this case the plaintiff went further than that and questioned the validity of the definition itself—the definition in the Defense Supplies Corporation's regulation, which defined what was meant by an unaffiliated non-processing slaughterer, and which of course defined what was meant by the words "own" or "control," as used in the regulation. [195]

I think we might submit even a further example. The Defense Supplies Corporation Regulation No. 3, which governs livestock slaughter payments, contains a provision in Section 10, I believe, to the effect that where the Price Administrator finds that an applicant, a slaughterer, applying for a subsidy, has been in local violation of price regulations or ration orders, the Defense Supplies Corporation has authority to withhold the applicant's subsidy payments. Now since that provision for withholding, which we might say in effect provides a cross-sanction of, shall we say, a penalty and not to indicate that withholding is a penalty—let us just assume that it is a penalty; it provides a penalty under the subsidy provisions of the Defense Supplies Corporation for a violation, not of the subsidy provisions themselves but of a price regulation or rationing.

Now the regulation itself provides, under Defense Supplies Corporation, that an agent of the Defense Supplies Corporation has authority to withhold subsidy payments where the Price Administrator finds that there has been a willful price or rationing violation. Now in that situation our

position is, and has always been, that a D. S. C. agent has authority to withhold the slaughterer's subsidy where there has been a finding by the Price Administrator of a willful violation.

Now assuming that the slaughterer files a case for declaratory judgment under 2 (m), in a situation of that kind [196] our position would simply be that the conduct of the D. S. C. Agent in withholding the subsidy under those circumstances was clearly within the authority given him by the regulation, duly enacted by Defense Supplies Corporation, and, therefore, the Court, under Section 2 (m), would be bound to find that it had no jurisdiction to question the validity of such a provision.

On the other hand, if the plaintiff in such an action were to take the position that the D. S. C. Agent had, for some reason not indicated by the Defense Supplies Corporation, withheld the subsidy, then the Court would have jurisdiction to pass upon that matter. To take perhaps a silly example, if the D. S. C. should withhold the subsidy, simply because the slaughterer didn't part his hair on the right side, or something of that sort, then clearly that is a matter which the Court has jurisdiction to pass upon under Section 2 (m). So it appears to us, then, that this case is clear authority for the proposition that the Court has no jurisdiction to consider the question of the validity of the regional orders which are contested in this case, and that, therefore, our motion to dismiss the complaint should be granted.

The Court: Do you care to argue that point further?

Mr. Skulason: Mr. Henderson wanted to.

Mr. Henderson: If the Court please, we wish to be of whatever help to the Court we can in this matter. If the Court still has an open mind on it, or needs to hear something [197] further, we will be glad to address ourselves to this question. If there is anything that has been suggested by this opinion from the District Court in Illinois that needs to be met, we will be glad to do that. We don't consider that any opinion by any Court is any stronger than the reason and the logic that is supposed to give it effect. If there is any reason and logic in this connection that appeals to your Honor as being persuasive on this question, then of course you should follow it. If it is not just the same as any other District Court you should disregard it; or, as far as that is concerned, any other court.

If the Court is not willing to cite reasons supporting its conclusions that are persuasive, no other court should follow it. To merely say, "we hold this" or "we hold that", means nothing. This is entirely a question of statutory construction. This judge pays no attention to any rule of statutory construction that I know of—just arbitrarily says this. I thought at the last hearing in this we pointed out to your Honor the most persuasive rule of statutory construction that there is, insofar as this Act is concerned, when we went through this Act and showed you in other respects when Congress was addressing themselves to a particular



subject relating to that particular subsection Congress there said "This subsection".

Now in this Act, or in this part, the language is very comprehensive. "If any order, or any person".

To illustrate what I said before,—I dislike to go over [198] what I have already addressed to the Court, to bring it up, to remind the Court. Now take, for instance, in the amendment, Section 2 here on the second page; it says, "he may, without regard to the foregoing provisions of this subsection", do certain things.

"any regulation or order under this section shall be".

"pursuant to the provisions of this subsection".

"nothing in this subsection shall be construed to modify", and so on.

Coming on down, "no power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of Section 3", referring definitely to what they are referring to.

"this subsection shall", so and so.

"no regulation, order or price schedule issued under this Act shall, after the effective date of this subsection".

"that in no case shall this subsection require", and so on.

Now that is the language that is used throughout this Act in all other matters.

Then when we come to this section in regard to the subject matter of the jurisdiction—and, inciden-

tally, if the Court please, let me remind you of what I said before. This litigant is in court. He wants to be heard before this Court—this Court in his territorial jurisdiction. He does not want [199] to file an action back in Washington and have them come out here. And that was one of the things that was argued before Congress when all of this was being considered and people were arguing, there was this man from down in Boston. Senator Taft called attention to the fact that this litigant in Boston had to come down to Washington to file his case, and there was being discussed the right of a litigant to litigate in his own court, so here is what they wrote into the law:

“any person aggrieved by any action of any agency, department, officer, or employee of the Government, contrary to the provisions hereof”—provisions hereof means what?—“or by the failure to act”—by the failure to act—“act of any such agency, department, officer, or employee, may petition the District Court of the district in which he resides or has his place of business for an order”, and so on.

The language used there is as sweeping and as comprehensive as by itself it possibly can be, the word “any”.

Now this opinion concludes, the last one—the rest of them are just of course ipse dixit, “I saw it, therefore it is so”; but the fourth one, or the “e”, to hold that subsection or paragraph (m) conferred jurisdiction upon the District Court to pass upon

the validity of regulations, you raise the very question of lack of uniformity of construction by the various District Courts which was said to be avoided by the creation of the Emergency Court of Appeals. [200]

Well, if the Court please, this case can't have a counterpart in New Hampshire, Georgia, or even in California. This case is peculiar to the State of Oregon and the State of Washington, the southern part of the State of Washington. This is a case that only this Court needs have to consider the facts in or apply the law to. There does not have to be any uniformity as to this case. It never will arise in any other court, in any other territory in the United States, so there is no necessity for asking or for claiming this Emergency Court of Appeals should have jurisdiction on the basis of uniformity. That cannot arise. This is a case that, as I say, will only be addressed to this one Court.

So we submit, if the Court please, that in construing the jurisdiction of a court, if you are going to exclude a right it should be so specific that the Court can have no question about it. If otherwise the Court has jurisdiction over this particular matter the Court should not be excluded because of the argument that has been advanced here, or the statements made in this opinion by this Court in Illinois.

The Court: How many witnesses do you gentlemen have?

Mr. Skulason: We have Mr. Norton here for a brief statement as to certain matters he didn't quite

fully cover, and then I have three others here, three or four, who will be very brief, your Honor, under our allegation that the defendants are threatening to invoke the sanctions of the Act against our [201] client.

The Court: Will you put them on.

Mr. Skulason: Mr. Norton, will you take the stand, please.

## PLAINTIFF'S EVIDENCE IN CIVIL NO. 2575

### C. W. NORTON

was thereupon recalled as a witness in behalf of the plaintiff and, having been previously sworn, further testified as follows:

The Clerk: Will you state your name, please.

The Witness: C. W. Norton.

Mr. Skulason: He has been sworn.

The Court: He has been sworn in this case.

Mr. Skulason: Would it aid your Honor in any way if I would briefly outline the complaint?

The Court: Yes.

Mr. Skulason: This was a suit brought by the Northwest Poultry and Dairy Products Company against Chester Bowles and others, and the grounds of the complaint, very briefly stated, are that this plaintiff has been engaged as a wholesaler, processor and purchaser of turkeys in Portland, Oregon, for the last twelve years, and that until the issuance of the regulations that have been attacked here, which followed certain practices, cost practices and

(Testimony of C. W. Norton.)

methods in that business which had been established in that industry by this plaintiff and others in the industry, and goes on to say that during that period [202] it had been the business practice and cost practice and method of wholesalers in this locality, and processors and purchasers of turkeys, to haul and pick turkeys for the growers on a per-head basis, and that during the latter part of the period the practice and custom had been to make a charge of 30 cents per head for picking toms and 22 cents per head for picking—no—yes, picking hens 20 and toms 22 cents, plus 3 cents for hauling, making a charge for picking and hauling of 23 cents for hens and 25 cents for toms.

Now that was the price, and this billing is here in view of the provision of the Act to the effect that settled and established business practices shall not be disturbed.

Then it goes on to say that in 1943 the wholesalers, etcetera——

The Court: Excuse me, Mr. Skulason. (The Court here conferred with Judge Fee.) Proceed, Mr. Skulason.

Mr. Skulason: I was saying, your Honor, in 1943 the wholesalers and processors raised this charge for picking and hauling per head to 25 cents and 28 cents, respectively, and that thereupon the OPA claimed that this was a violation of the Emergency Price Control Act and ruled that the service charge should be reduced to the former figure, 23 and 25.



(Testimony of C. W. Norton.)

I am sure your Honor understands what I am saying about that.

Then there was a ruling established in November of 1943 [203] to the effect that the processor or wholesaler was prohibited from purchasing dressed turkeys from the grower, although this had been the uniform custom in the locality mentioned for many years, which meant that he should not pay the ceiling price fixed by the Office of Price Administration but dress turkeys and charge the growers for the service of picking and hauling them, and this ruling, it is alleged, ignored and disrupted the custom and practices in the trade, in the business.

Then later this was changed again in November, 1943, to the effect that the processors, who had dressed turkeys for farmers, might continue to buy the turkeys on a dressed basis providing they did not exceed the ceiling of dressed turkeys, and this, according to the complaint, brought some order and clarity out of the confusion that existed, and the plaintiff and others in the same business went ahead and complied with those regulations as those changed, as best they could, and were going on in that way until in May, on the 2nd of May, 1944, this Order G-93 came out, which changed the service charges from a per-head basis to a per-pound basis.

Your Honor will recall the testimony that came in there from Mr. Norton and the gentleman from Seattle, in which they explained how high a charge that came to be on the average weight of turkeys, and this Order G-93 was accompanied by what we

(Testimony of C. W. Norton.)

have designated as Exhibit B here, in which it was stated that this was a fixed price for the service; not a maximum [204] price, nor a minimum price, but both combined, an absolute fixed price, and warned the people in the business that any charge of more than this amount per pound would be a violation of the Act and any charge of less would likewise be a violation, and threatened consequences that might follow from such violation.

Now your Honor will remember that gentleman from Seattle, Mr. Perry, I think his name was——

The Court: Perry.

Mr. Skulason: He said that it came to as high as \$1.05 a head on turkeys that he was handling, that he was compelled to charge the grower.

Now we have attacked this order, and with the interpretation that has been appended to it, on various grounds, that it is not general in its application, it applies only to a certain small portion of the country, Washington and Oregon, with the exception of the County of Malheur, according to Exhibit B, and that it is in a sense confiscatory; that it violates constitutional property rights, and that its enforcement would result in putting my client and those in a similar position out of business, because the growers would not sell them turkeys if they were charging such a large amount.

Now we also say it is discriminatory because the cooperative associations engaged in the same business could [205] comply with this order, because they were allowed, and are allowed, to return to

(Testimony of C. W. Norton.)

their members, by way of a dividend, a certain portion of this charge, so as to remain on the basis that they were on before this order came out. The result would be that the grower would join a cooperative or deal with a cooperative and he could get his money back by way of a dividend, while people in the position of the plaintiff here could not.

Now this was very emphatically impressed upon the Office of Price Administration, and the result was the issuance from Washington of an order, which, in effect, modified this G-93, as explained and amplified by Exhibit B, by permitting the plaintiff and those in a similar position to enter into agency contracts with the growers.

With the consent of counsel I mailed to your Honor a copy of that regulation, which you may not have had time to look at. And they were permitted then, if they acted as agent for the growers, to divide the premium with the grower, putting people in the position of my client I think substantially on the same basis as the cooperatives. So that is the situation there.

But now there was still another order issued, changing the amount to be charged per pound. But we are very far from being out of the woods, your Honor, in this case, because under Order G-3 they undertook to define who is a wholesaler and prescribe certain regulations concerning that, and the effect [206] is—I won't take the time to explain it; I will allow Mr. Norton to explain it—the effect

(Testimony of C. W. Norton.)

under that provision is that the plaintiff here is practically put out of business because it always has acted as a wholesaler and now under this G-3 it is no longer permitted to act in that capacity.

Let me refer to it further. That was issued on August 30th, 1944, and in that order are found certain definitions of wholesaler, and it is said that this designation means any person who processes all of the characteristics mentioned in the order, among which is that he must customarily sell and distribute at least 75 per cent of his dollar volume of poultry items, exclusive of sales to the United States Government, or any agency thereof, for ultimate consumption within a radius of 100 miles from his place of business.

Mr. Norton testified somewhat along that line before, but I shall ask him, with permission of the Court, some further questions about it, as to how that operates and affects his business.

Finally, we claim, your Honor, that we have done the best we could. We have acted in the utmost good faith in carrying out these regulations. Mr. Norton is himself a member of the National Board controlling these things, and that we have approached the matter and dealt with it in a sort of complete cooperation, so far as it was possible to cooperate, but it has come to a place where it is destroying the business [207] of this plaintiff.

And then we finally plead that the defendants are actually attempting to enforce these orders and are threatening to invoke against the plaintiff the

(Testimony of C. W. Norton.)

sanctions and penalties of the Act, and in support of that statement we have here the witnesses I mentioned a while ago.

We shall show to your Honor that they have sent their representatives into the field. They have issued orders somewhat similar to subpoenas, demanding a complete report of business done with my client. They have centered on my client. They are trying to build up a case against this company, and they have also made certain threats to Mr. Norton himself. He was told by a representative of this office that if he attempted to deal as a wholesaler with his turkeys any further, that he would be sued for damages and that he would be prosecuted criminally.

Now that is the situation, as I understand it to be here, and if I have made clear to the Court the substance of what our case is I will go on with the testimony and not go over the same ground, as we went over before.

#### Direct Examination

By Mr. Skulason:

Q. Mr. Norton, I want to ask you some questions about G-3. You know what I am referring to?

A. Yes, sir. [208]

Q. You are familiar with the terms of that order?

A. Yes.

Q. Will you state to the Court how you understand it applies to you and your business and the business of the plaintiff here.



(Testimony of C. W. Norton.)

A. Well, both of these orders are regional orders emanating out of San Francisco. There are national orders covering both of them, which are worked out by a board that is appointed by the National Office of the OPA and the War Food Administration. The interpretation of the order No. G-3 was given me. The difference between the national order and the local order is simply this: The national order says that 75 per cent of your merchandise must be sold for ultimate consumption within a radius of 200 miles. This order, as explained to me, says that if you dress 75 per cent of the merchandise you sell, then you must sell that within a radius of 100 miles. The difference between the two, as I say, is one—if you sell 75 per cent of the merchandise that you handle within a radius of 200 miles you are a wholesaler, but in the other, if you dress 75 per cent of the merchandise you sell you are a processor. That might mean a small butcher shop, as far as I understand the order, if he dresses 75 per cent of the chickens he puts out over the counter, and the difference between a processor and a wholesaler is a cent and a half a pound, and if we are denied the privilege of acting as a wholesaler, which we have ever [209] since we started into business, that cent and a half a pound must come out of the grower.

Q. How does that affect——

Mr. Wetherall: We object to the testimony, your Honor, on the ground that it is incompetent, irrelevant and immaterial; and on the further

(Testimony of C. W. Norton.)

ground that the matters testified to are not properly within the jurisdiction of the Court.

The Court: It will remain, subject to the objection.

Mr. Wetherall: And may it be understood that this objection we are making now be considered a blanket objection to any and all further testimony of the witness along the same line?

The Court: It is so understood. It will all be heard, subject to the objection.

Mr. Skulason: Q. Now Mr. Norton, explain to the Court exactly how this affects you and what dealings you have had with the OPA representatives here regarding your acting as a wholesaler of turkeys recently.

A. If that is done it means just one thing—that there will not be any turkeys for the civilian trade in the States of Oregon or Washington at Thanksgiving time. The reason for that is the Washington, D. C., office granted us permission to act as agent for the sale to the Federal Government of turkeys as the embargo lifted at Washington, D. C., at 12:01 last Saturday night, and we had to sell certain quantities of turkeys to the Government. [210]

The Court: Have him slow down.

Mr. Skulason: Don't talk quite so fast, Mr. Norton, please.

The Witness: Pardon me. We had to agree, all wholesalers—I mean, all processors and wholesalers had to agree to deliver turkeys to the Federal Government over a period of four months. In our

(Testimony of C. W. Norton.)

case we had to sign up for delivery six million pounds of turkeys between now and the end of February. On those turkeys, acting as agent for the grower, we can net the grower a cent a pound more than what we can net the grower in sales under the regional OPA order. Consequently all of the turkeys must go to the Government in order to protect the growers since these orders are out.

Q. Now then, I don't quite understand what you refer to there where you spoke of the amount netted to the grower of turkeys sold otherwise than to the Government. Explain that, please.

A. That is, if we were selling, under G-93, the net price to the grower on today's basis would be one cent less than acting as an agent for the grower and selling to the Federal Government. Consequently all of our turkeys, and all of the other dealers' turkeys, must go to the Federal Government, and we have a Retail Meat Dealers Association, Hotelmen's Association, Restaurant Association, Fred Meyer's organization, Safeway's Organization, that will have to be without turkeys for Thanksgiving under this present regulation.

Q. Now did you have a conversation with some member of the OPA [211] office here about this matter of selling turkeys to some particular customer?

A. We have every year an order for the Continental Motors Corporation, which is a gift for Christmas, and we secure a letter from the local

(Testimony of C. W. Norton.)

office of the OPA to the effect that we can fill that order. The order calls for 25,000 head.

Q. You would fill that as an order, would you?

A. Last year we were given a letter from the OPA office. This year we were told if we acted in that capacity we would be prosecuted criminally.

Q. Who told you that?

A. Mr. Freebourn.

Q. Who is he?

A. Attorney for the OPA here in Portland.

Q. How did you happen to have that conversation with him?

A. I called and asked for a duplicate letter, similar to the one written to me last year by Miss Cooper.

Q. You called him about it?

A. I called and asked for a letter of authorization.

Q. Giving you permission to fill this order?

A. To fill this order.

Q. And did he write you about it?

A. He did not. He said he would not give a letter on it; that he would prosecute us criminally if we acted as a wholesaler in the case. [212]

Q. Now your business, aside from processing turkeys has that ever been that of wholesaling?

A. That is the way we built our plant, the way we have to act as wholesaler in this district.

Q. You are not a retailer at all, are you?

A. Not a retailer.

(Testimony of C. W. Norton.)

Q. Well, if you can't wholesale your own turkeys, what is going to be the effect on your business?

A. Well, we can't operate, if we are a wholesaler. We are listed in the directory as a wholesaler, and we have taken care of this district for the last twenty years. The organization before I came here was in the same business.

Q. You can't carry on unless you are allowed to operate as a wholesaler, then?

A. That is correct.

Q. Well now, let's go into it a little further. Couldn't you sell turkeys under this G-3 within the 100-mile radius and keep on doing business?

A. Not as a wholesaler, under G-3. They are attempting to close us as a processor and a processor has no market. A wholesaler has a market, and a cent and a half a pound, and if we had to act—if we had to put somebody in between us, put somebody else in business in between us and the meat market, we would have to take our margin of profit out of the grower and it falls right back in his lap. We were definitely told, or [213] given to understand at meetings with the OPA, those two orders went together, that the G-3 order would force us to abide by G-93.

Q. What have you actually done there regarding this matter?

A. After your conversation with Miss Gallagher on G-93 we are operating on the agency agreement



(Testimony of C. W. Norton.)

and we have no turkeys to sell anybody excepting the Government.

Q. As to G-3?

A. As to G-3, we are still operating as a wholesaler of turkeys. Our turkeys are all going to the Government.

Q. And on what basis did you conclude that you would do that—would continue to do that?

A. I had a letter from you telling me to continue on that basis until we had a decision from the Court.

Mr. Skulason: If your Honor please, Mr. Henderson and I considered that matter and we advised him, under the circumstances, to continue as he had until this matter was settled. So I want to make it clear, he is acting on our advice, as far as that is concerned. We could not see any other way out than to shut his business down.

Q. Mr. Norton, since the last hearing here I think you explained—by the way, you explained about that difference in the effect of 100-mile radius and 200-mile radius, didn't you, before?

A. Yes.

Mr. Skulason: I think your Honor probably remembers that. [214] It is in the record anyway.

Q. Now since the last hearing here, what knowledge have you, if any, as to what the Office of Price Administration is trying to do to force you to comply with these orders?

A. Well, they have contacted, to the best of my knowledge they have contacted every turkey grower within a radius of 50 miles or 60 miles of Portland.

(Testimony of C. W. Norton.)

I don't know that they have been any further away than that, but they have contacted all of them. There has been as high as five men in the field and they have been subpoenaing the records of the growers and telling them they were subject to prosecution if they accepted less than a certain figure for the packing and hauling.

Q. This is according to certain information that has come to you? A. That is correct.

Q. And there are witnesses here on that point, aren't there, Mr. Norton? A. There are.

Q. Mr. Norton, have you done anything in the conduct of your business, made any changes in the way you have been doing your business to call for this change in the way you should conduct your business, not as a wholesaler but as a processor only? Do you know any reason for these orders for this classification they made in your case?

A. I can't—rather, there has been no change in my method of [215] doing business with anyone else in the area. We have continued about the same as we have ever since we have been in business. There has been no change in the method of operating. The only change in the method of operating is that the Government is taking more of our merchandise today than what they did previously.

Q. Well, would that have any effect upon your business?

A. That would have no effect upon our business. It is just that we share with the Government a cer-

(Testimony of C. W. Norton.)

tain percentage of our output rather than all going to civilians. There is no change in the method of doing business.

Q. Do you know of anything that has occurred there in what you have done, or not done, or what has occurred generally, that would call forth this classification—this change?

A. There has been nothing in either of these states that would call for the issuing of either of these two orders, to my knowledge.

Q. Now you are on the Board and you are quite familiar with all of these regulations, aren't you?

A. Well, the Board was set up and we sit in with the War Food and the OPA Board. It is composed of four members on the Pacific Coast, who represent the eleven western states, and the balance of them are strung out through the rest of the United States. This is the industry board and we set in one the writing of these regulations, which we do on the national order, [216] but in this case this is a regional order issued out of San Francisco that does not have a board and it supercedes the national order.

Q. That is permitted to supersede the national order?

A. It attempts to supersede the national order. Both of these regulations are covered in the national order but this is something set up different for our particular little community here.

Q. Yes. Under the national orders you can still operate as a wholesaler, can you?

(Testimony of C. W. Norton.)

A. That is true. That was the understanding.

Q. Under the national order you could still sell within a radius of 200 miles?

A. Still sell within a radius of 200 miles, and we could still charge the same for picking and hauling that we charged for the past ten years.

Q. So this, as I understand it, comes solely from the regional office at San Francisco?

A. Solely from the regional office.

Q. Contrary to the national orders and regulations?

A. And I am advised by the War Food and the OPA at Washington, that the reason we are acting as agent for the grower to sell to the Army is to circumvent these two orders out of San Francisco so as to get turkeys for the boys overseas.

Q. The order also allowing you to act as agent didn't come from the San Francisco office? [217]

A. From Washington, D. C., and it was received by the local office on the 27th day of September and our hearing date was on the 6th, and they claimed they didn't have such an order in their offices.

Q. You have acted under that modification, haven't you?

A. Acted under the agency agreement ever since the last hearing, 100 per cent so far as turkeys are concerned.

Q. 100 per cent?

A. That is correct.

Q. And you are doing that now?

(Testimony of C. W. Norton.)

A. Doing that now, and will continue to do it until those regulations are changed.

Mr. Skulason: You may cross examine.

Mr. Wetherall: Without receding from our position in the matter, namely, that the Court has no jurisdiction to consider questions of validity, I should like to ask the witness one question, which I believe would more properly come as cross examination involving testimony given at the previous hearing.

#### Cross Examination

By Mr. Wetherall:

Q. Assuming, Mr. Norton, that you receive a lot of turkeys from a grower, you process those turkeys; after assembling and hauling to your plant you kill them, bleed them, pluck them, grade them, head-wrap them, chill them, performing all the functions described by Regional Order No. G-93 in order to entitle you [218] to the maximum service charge of 2.8 cents a pound therein prescribed, assuming that you do all that and that you buy dressed turkeys from the grower and sell them on the civilian market as a processor, without taking the cent and one-half a pound wholesale markup, and of course without receiving the one-cent-a-pound selling addition allowed on sales to the Government, under those circumstances, Mr. Norton, is it your opinion that the service charge of 2.8 cents a pound prescribed in the order is excessive or too high?

A. I am not sure I get just what you mean.



(Testimony of C. W. Norton.)

You mentioned cooling, headwrapping, and so forth. Nearly all of the turkeys that we buy are bought as they come off the line, on the hot weight. The grower's interest in the turkey ceases the minute that that bird is graded off the line. From there on the bird loses its identity and the grower ceases to have any interest in that bird. Now for the service up to that point 2.8 is definitely too high. The charge we were making previous to this order coming out was 23 cents on the hens per head and 25 cents per head on the toms, and we raised last fall, which was brought out, 2 cents on the hens and 3 cents on the toms and paid a fine to this office for raising and went back to the 23 and 25 cents. At that time our cost showed that up to the point where that bird was graded from the grower it took 25 cents on hens and 28 cents on toms to cover the out-of-pocket money charge on that transaction. From there on—now wait a minute—the [219] cooling, if we were selling civilians, many, many times the birds are taken out of our place hot. They are not even precooled. How could you charge a grower for pre-cooling if you didn't do it?

Now in the case of grading, the Government is grading every one of our turkeys at the present time themselves. There is no expense to us for grading. The Government is doing that grading. They have a man in each of our plants and they are grading the birds. The grading on the line upstairs is done by one of our own men, own graders, and from those birds we deduct one per cent for hot

(Testimony of C. W. Norton.)

weight and that takes care of the shrink between hot and cold.

Does that answer the question? It is a round-about way.

Q. I appreciate your answer. I think perhaps I was misunderstood. The situation presented is one where you would not be selling to the Government and, therefore, would not be receiving the cent-a-pound selling addition allowed on sales to the Government but you would be selling the dressed turkeys at the ceiling price applicable to the processor, to a civilian buyer; in other words, a situation where you would process the live turkeys for the grower and buy them after they had been processed from the grower and in turn sell them on the civilian market. Now in that type of situation do you think the maximum service charge prescribed in Regional Order G-93 of 2.8 cents a pound is [220] excessive to cover your operation?

A. I think I can better explain that in this way: That if I am acting as a custom processor and do not take title to the birds, my profit then has to come out of that one only item, if I am acting as a custom processor.

Q. Yes.           A. Which we do not do.

Q. Well, let's assume that situation then, Mr. Norton.

A. Assume that the situation is I am a custom processor and do not take title to the turkeys in any way, shape or form, the grower takes them out of the plant?

(Testimony of C. W. Norton.)

Q. Yes.

A. Then I would have to take my profit out of the grower.

Q. You think then that the 2.8 is excessive?

A. Well, for the entire service—for that service, if I am acting as a service processor and do not take anything else from the turkey, 2.8 is not out of line.

Q. Is not out of line?

The Court: Do you want to put on these outside witnesses, so some of them can go home? It is evident that some of them will have to go on this afternoon.

Mr. Skulason: Yes. Before I do that I want to offer two exhibits here, when counsel is through. Are you through?

Mr. Wetherall: That is all.

Mr. Skulason: Yes. Mr. Bailiff, please show the witness [221] these two exhibits.

The Court: Mr. Norton, let some of these other people get up here so they can get back to what they have to do. Let's use this half hour for some of your outside witnesses.

Mr. Skulason: Yes. I was simply going to offer two exhibits; then I am through with him.

The Court: Yes. Well, I am not sure that you are through with him.

Mr. Skulason: All right. Well, go on then. That is all right. Bring them back.

(Witness withdrawn.)

Mr. Skulason: Mrs. Smith, will you take the witness stand, please.

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ROSE M. SMITH

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Skulason:

Q. Will you state your name, please.

A. Rose M. Smith.

Q. And where do you live?

A. Oswego.

Q. What is your occupation?

A. Truck grower. [222]

Q. And are you married? A. Yes.

Q. Your husband's name? A. Arthur H.

Q. Is he in the truck business with you?

A. Well, yes. He is a contractor also.

Q. Yes. Do you recall that someone from the OPA office called on you on last September, regarding your dealings with Mr. Norton's Company?

A. Yes.

Q. Just when did that occur?

A. Well, I really don't remember the date. It is down there. I wrote that the day after he came.

Q. September 27th is the date in this letter.

A. That would be the date, yes.

Q. And who was it? Do you know his name?

(Testimony of Rose M. Smith.)

A. Well, Mr. Rodemack, Rodeman, or some such name as that.

Q. Rodeback, isn't it?

A. Rodeback. That is right.

Q. What did he say to you?

A. Well, he wanted to know who we sold to. When I told him he said to me, "Why don't you deal with somebody honest, somebody like Clark Brothers?"

Q. You told him you were dealing with Mr. Norton's company?

A. Yes. When he came he wanted to know if we had sold our [223] turkeys.

Q. And did he go into any details about honesty, or lack of it, in Mr. Norton.

A. Yes, he did infer, said that Mr. Norton or the Northwest Poultry wasn't any good, we would get a very much better deal if we dealt with Clark Brothers or somebody else.

Q. Did he say anything about the charges Norton was making?

A. He wanted to know how much we had paid and we wouldn't tell him.

Q. How much you had paid Mr. Norton's company?

A. Yes; for the killing and hauling.

Q. Did he ask for your records, and books, and things? A. Yes. He wanted our records.

Q. Did you give them to him?

A. We did the following day, or shortly after that.



(Testimony of Rose M. Smith.)

Q. Did he say anything about how Norton had treated the growers?

A. Well, yes, he did. He was telling—do you want me to go into detail?

Q. Yes, please.

A. Well, one instance he was telling about some flock of turkeys that we had just—it was a huge amount and he had just taken a car and driven right down the center of the flock and divided it in half, and he sold the first half to Clark Brothers and they kept the other half for two weeks longer and when he sold that in that way he figured he would make a great deal more [224] than when he had sold to Clark Brothers, because he had kept the turkeys two weeks longer, and when he got the receipts from the Northwest it was less than what he had received from Clark Brothers.

Q. In addition to mentioning his lack of honesty, did he say anything further about his business practices, as to whether or not they were fair or just?

A. Well, all through his talk he inferred that he wasn't honest, but towards the end when he—well, we had looked into Northwest Poultry and we had never heard a derogatory remark about them, and when we heard—you know, I thought they were perfectly honest; then he did change and then he was—he had lost the inferring that they were dishonest.

Q. Did he give any reason, say anything as to

(Testimony of Rose M. Smith.)

what the GPA office, or someone in San Francisco, was trying to do to Norton?

A. Well, he inferred, or did say, I guess, that this wasn't a Government—what do I want to say? It was really they were trying to get him from—

The Court: Well, that is enough, I guess. We will pass that up.

Mr. Skulason: All right, your Honor.

The Court: We will have to consider this question of authority sometime in the case, regional authority as opposed to national.

Mr. Wetherall: Incidenally, we assume our same line of objection made to Mr. Norton's testimony will apply to this witness. [225]

The Court: I understand.

Mr. Skulason: Q. Did he mention what Norton's company was charging you per head for processing turkeys?

A. Well, he wanted to know how much we were—how much he charged us for the pick and haul.

Q. Did you tell him? A. No, I didn't.

Q. How much was Norton charging, as a matter of fact?

A. Well, I believe it was 30 and 35, or I would have to look to be sure.

Q. 30 and 35 cents?

A. But they have the records.

Mr. Skulason: You may cross examine.

Mr. Wetherall: No cross examination.

The Court: That is all.

(Witness excused.)

Mr. Skulason: Mr. Leo Hardebeck.

The Clerk: Will you state your name, please.

Mr. Hardebeck: Leo Hardebeck.

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LEO HARDEBECK

was thereupon produced as a witness in behalf of the plaintiff in Civil No. 2575 and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Skulason: [226]

Q. Where do you live, Mr. Hardebeck?

A. I live at Gaston.

Q. And what is your occupation?

A. Turkey raising and general farming.

Q. Are you acquainted with Mr. Norton and his company, the Northwest Poultry?

A. Yes, sir.

Q. Have you done business with them?

A. Yes, sir.

Q. How long have you been in this business you mention? A. Well, this is the second year.

Q. Now did anyone from the OPA office call on you on or about the 17th of last month?

A. Yes.

Q. Do you know who it was?

A. Well, I had his name on that paper.

Q. On this paper, Kallas and Schallinger?

A. Yes.

Q. And what did they say to you?

(Testimony of Leo Hardebeck.)

A. Well, they come down there and they said they were from the OPA, and they wanted to know what I thought about it. I said, "Well, I kind of figure it is all right, but it seems like they are going around getting into things that they shouldn't." And he asked, "Well, who are you selling your turkeys to?" I says, "Well, so far as I am concerned I am dealing with Northwest." [227] He asked me if I had always dealt with them. I said, "Yes." He asked me how much they was charging to haul and kill my birds. I told him, and he says, "Well, why do you deal with Northwest?" I says, "Well, I have always dealt with them. He has always dealt with me and give me a square deal. He has always been honest with me." And he says, "We are sending out here from the head office of San Francisco about this haul and kill proposition that has came up. We would like to know you farmers' viewpoint. We would like to have letters from you stating why you would rather haul and kill for 30 and 35 than take the 2.8." "Well," I says, "for one thing the 2.8 nets us more for our birds." He says, "Well, why should you—why do you figure that you should have the 30 and 35 haul and kill instead of the 2.8?" I told him, "The first thing, our pullets this year cost us 30 cents apiece more, and our feed has cost us a considerable more." Take the Government wheat, for instance, it jumped from I think \$1.04 or \$1.05 a bushel, in there some place, to \$1.30 a bushel, and I says, "There is the label." And I says, "On this 2.8 proposition we are not get-

(Testimony of Leo Hardebeck.)

ting as much for our birds as we got last year, for last year they paid a premium on hens." They said, "Well, we are going around here to rectify this. We are going to try to make a change. If you farmers had rather have the 30 and 35 we would like to have letters from you and we will send them down to the office, down at San Francisco, and we will see what we can do about it." [228] So I gave them a letter to that effect and stated that I would rather haul and kill that way than the other way, and gave them the reasons. And I had previously sold one truck load of birds the month before, just kind of as a test load or so, more to see how they would kill out, and he wanted to see the papers of that load and I didn't let him have them. So he took the letter, and my brother happened to be there at that time, so he started to ask him questions, and everything, but he didn't sign any letter. So my brother left my place right away and went up to his place, where he lived, and up there was another set awaiting for him to come home to ask him questions.

Q. Did those men, or one of those men, serve on you any paper?

A. Not at that time. That was Saturday—that was Friday when he was there, so the next Saturday—well, that was the first day they took a load—two loads of turkeys. They were going to send them out on Saturday, so Saturday I went down there to see how the toms and hens were dressing out, and



(Testimony of Leo Hardebeck.)

as soon as I walked into the office Ryals told me, "Well, there is a new deal come through today."

Q. Who is Ryals—in whose office?

A. Well, in the Northwest office. And he says, "There is a new deal come through today, so that shoots you along next on the range and there is no charge for haul and kill." He says, "That will give you about the same deal as we have charged, 30 and 35." [229]

Q. That is the agency arrangement, isn't it?

A. Yes.

Q. But now you did get from the office here a certain paper, didn't you?

A. Yes. That was the next week afterwards they come through. There was three of them. One of them stayed out in the car and the other two came up to the house and demanded my papers of my birds that I had previously sold. I says, "These papers of birds that I am selling now I haven't got yet." And he says, "Well, what kind of a deal are they giving you?" I says, "Well, I went in the office there the other day and they said a new deal has came through," and he says, "Is that the OPA order?" I says, "Well, he gave me an idea it was an OPA order." And he said he didn't know anything about the deal being changed, or the price ever being changed at all. He didn't know a thing about it. He argued the point with me.

Q. Well, you received that paper, didn't you?

A. Well, he demanded to see my papers of the previous load of birds I sold. I said, "Well, what

(Testimony of Leo Hardebeck.)

do you want to see that paper for?" He said, "Well, we want to see that paper to see if Northwest is giving you as much for these birds as they should." I said, "Well, I am satisfied." I said, "It looks like you would be satisfied if I am satisfied." So I refused to give them any more information and he handed me that and said it was a subpoena I had to let him see these papers, but [230] I did not do it.

Mr. Skulason: Will you pass this paper to the witness?

Q. Is that the paper you refer to that he handed to you?      A. Yes, it is.

Q. He handed it to you?

A. Well, it was either Kallas or Schallinger; I couldn't say which was which.

Mr. Skulason: Yes. I offer it in evidence and ask that it be marked.

The Witness: And at that time, sometime that afternoon, I had a hired man working in the field about 18 miles from there. They had a different set there asking him questions.

Mr. Skulason: I see.

(The Inspection Requirement directed to L. W. Hardebeck, dated October 17, 1944, so offered, was received in evidence and marked Plaintiff's Exhibit 1.)

(Testimony of Leo Hardebeck.)

PLAINTIFF'S EXHIBIT No. 1

OPA Form 2915-1

United States of America

Office of Price Administration

INSPECTION REQUIREMENT

To: Leo Hardebeck

Gaston, Oregon

In connection with an investigation to assist the Price Administrator, Office of Price Administration, in the administration and enforcement of the Emergency Price Control Act of 1942, as amended, and especially of the following:

Revised Maximum Price Regulation-269 as amended.

Regional Order G-93 as amended and

Regional Order G-3 as amended

You Are Hereby Forthwith Acquired to Permit Peter T. Kallas and Ernest Schallinger, representatives of the Office of Price Administration to inspect at your place of business the following documents:

All statements of account, manifests, weighing-in slips, bank drafts, bank deposit slips, letters, telegrams and all other documents in connection with all sales of turkeys made by you to the Northwest Poultry and Dairy Products Company of Portland, Oregon, or its branches from September 1, 1944 to and including October 17, 1944.

and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents, and

(Testimony of Leo Hardebeck.)

You Are Further Required to Permit the afore-said representatives to inspect the following:

now in your possession or under your control.

Issued this 17 day of October, 1944, at Portland, Oregon.

[Illegible]

Acting District Director

Sections 202(a) and 202(b) of the Emergency Price Control Act of 1942 (Public Law 421—77th Cong., chapter 26—2nd Sess.), as amended, authorize the Price Administrator to make such studies and investigations of price and rent matters as he deems necessary or proper to assist him in prescribing any regulation or order under the Act, or in its administration or enforcement, and to require any person who is engaged in the business of dealing with any commodity, or who rents or offers to rent or acts as broker or agent for the rental of any defense housing accommodations, to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of such housing accommodations. Under Section 4(a) of the Act, wilful refusal to obey this inspection requirement is a violation of the law, and under Section 205(b) any person guilty of such violation will be liable to a fine of not more than \$5000.00 or to imprisonment for not more than one year, or both. Under Section 205(a) such violation may also cause the issuance of a court order, the

(Testimony of Leo Hardebeck.)  
disobedience of which will render a violator subject  
to punishment for contempt of court.

### RETURN OF SERVICE

I certify that a duplicate original of the within  
Inspection Requirement was duly served\*

[ ] on the person named therein.

[ ] by leaving the said original at the principal  
office or place of business of the person named  
therein, to wit, at: ..... on the ....  
day of ....., 194...

.....

(Person making service)

.....

(Title)

\*Check method used.

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Mr. Skulason: You may cross examine.

Mr. Wetherall: No cross examination.

The Court: Step down.

(Witness excused.)

Mr. Skulason: I will try to make this next short  
and get through with these two witnesses, your  
Honor. Mrs. Rowe, please.

The Clerk: Will you state your name, please.

[231]

The Witness: Mrs. Jack Rowe.



## MRS JACK ROWE

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Skulason:

Q. Where do you live, Mrs. Rowe?

A. I live at Yamhill.

Q. And is your husband here in the courtroom?

A. He is.

Q. You are in what business?

A. Turkey business.

Q. How long have you followed that?

A. Twelve years.

Q. Have you dealt with Mr. Norton and his company?

A. I have dealt with no one but Mr. Norton's sons.

Q. During all of that time?

A. All of that time.

Q. Did anyone from the OPA office call on you recently about his business—Mr. Norton's, and his company's business?

A. Yes. We have had two phones from the people.

Q. Will you tell us now briefly what they said to you?

A. Well, I think my testimony will be about the same routine, "Are we satisfied, or are we sure that we are getting a better [232] deal from the Northwest?" "Are we sure that we are doing right in

(Testimony of Mrs. Jack Rowe.)

doing what we are now with the price, if the price were at 2.8," or whatever it were. In the first instance, we didn't know until we were informed by them of them, but that would have no special bearing on where we were killing anyway.

Q. Did they say anything to you about the consequences to you if you continued to sell to Mr. Norton?

A. Well, I think that I probably understood that we were under the same rigamarole as what is going on now. My opinion is that all of us growers, but it might be just a personal opinion, I won't say it was explained thoroughly to me, that we were still under that setup until this thing was cleared up definitely where we would have to pay the regular price, or not—something like that.

Q. Did he say anything to you as to whether you should continue to deal with Norton's company?

A. No, he didn't, because we were killing our last birds the day they were there. They were all hung up.

Q. Was your husband present when these conversations took place?

A. He was for part of one conversation. The other part he wasn't.

Q. Was there sent to you, or delivered to you, any paper called an inspection requirement?

A. Yes. And I also give them—they asked for a statement also of an early kill we have, and they have a statement as to the [233] weights, price and grade of a lot of turkeys there.

(Testimony of Mrs. Jack Rowe.)

Mr. Skulason: Yes. Hand this to the witness, please.

(Paper passed to the witness.)

Q. Is this the paper they gave you?

A. Yes, it is.

Mr. Skulason: I offer it in evidence, your Honor.

The Court: It is admitted.

(The Inspection Requirement addressed to E. J. Rowe and Lilly M. Rowe, so offered and received, was marked Plaintiff's Exhibit 2.)

## PLAINTIFF'S EXHIBIT No. 2

OPA Form 2915-1

United States of America

Office of Price Administration

### INSPECTION REQUIREMENT

To: E. J. Rowe and Lilly M. Rowe

Route 2

Yamhill, Oregon

In connection with an investigation to assist the Price Administrator, Office of Price Administration, in the administration and enforcement of the Emergency Price Control Act of 1942, as amended, and especially of the following:

Revised Maximum Price Regulation-269 as amended

Regional Order G-93 as amended, and

Regional Order G-3 as amended

You Are Hereby Forthwith Required to Permit Peter T. Kallas and Ernest Schallinger, representa-

(Testimony of Mrs. Jack Rowe.)

tives of the Office of Price Administration to inspect at your place of business the following documents:

All statements of account, manifests, weighing-in slips, bank drafts, bank deposit slips, letters, telegrams and all other documents in connection with all sales of turkeys made by you to the Northwest Poultry and Dairy Products Company of Portland, Oregon, or its branches from September 1, 1944 to and including October 17, 1944.

and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents, and

You Are Further Required to Permit the aforesaid representatives to inspect the following:

now in your possession or under your control.

Issued this 17 day of October, 1944, at Portland, Oregon.

[Illegible]

Acting District Director

Sections 202(a) and 202(b) of the Emergency Price Control Act of 1942 (Public Law 421—77th Cong., chapter 26—2nd Sess.), as amended, authorize the Price Administrator to make such studies and investigations of price and rent matters as he deems necessary or proper to assist him in prescribing any regulation or order under the Act, or in its administration or enforcement, and to require any person who is engaged in the business of dealing with any commodity, or who rents or

(Testimony of Mrs. Jack Rowe.)

offers to rent or acts as broker or agent for the rental of any defense housing accommodations, to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of such housing accommodations. Under Section 4(a) of the Act, wilful refusal to obey this inspection requirement is a violation of the law, and under Section 205(b) any person guilty of such violation will be liable to a fine of not more than \$5000, or to imprisonment for not more than one year, or both. Under Section 205(a) such violation may also cause the issuance of a court order, the disobedience of which will render a violator subject to punishment for contempt of court.

### RETURN OF SERVICE

I certify that a duplicate original of the within Inspection Requirement was duly served\*

[ ] on the person named therein.

[ ] by leaving the said original at the principal office or place of business of the person named therein, to wit, at: ..... on the .... day of ....., 194...

.....

(Person making service)

.....

(Title)

\*Check method used.



(Testimony of Mrs. Jack Rowe.)

Mr. Skulason: Is there any cross examination?

Mr. Wetherall: No.

(Witness excused.)

Mr. Skulason: Mr. Rowe, please.

The Clerk: Will you state your name, please.

Mr. Rowe: Jack Rowe.

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### JACK ROWE

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Skulason:

Q. Are you the husband of the last witness?

A. Yes. [234]

Q. And did you hear her testimony?

A. Yes, sir.

Q. And what have you to say? If you testified would you agree with what she said or not?

A. I would corroborate her 100 per cent.

Q. 100 per cent? A. Yes, sir.

Q. Did those men have any talk with you in the absence of your wife?

A. No, sir. Just both me and my wife.

Mr. Skulason: Yes. That is all.

The Court: That is all.

(Witness excused.)

The Court: Mr. Wetherall, did you want to get back to San Francisco this afternoon?

Mr. Wetherall: No. I am staying over, through tomorrow.

The Court: All right. Then we will resume at two. I would hasten the matter if he had to get away.

Mr. Skulason: Your Honor, on this type of testimony we have called only two witnesses but those are somewhat along similar lines. We, of course, could produce a great many more witnesses on this same line but it would be cumulative.

The Court: Come back at two o'clock.

Mr. Skulason: Yes. [235]

Mr. Wetherall: It is understood, I just want to make this clear, that our objection relates to the testimony of the last three witnesses as well as to the first two.

Mr. Skulason: Oh, certainly.

Mr. Wetherall: That is all right.

The Court: Recess until two.

(Thereupon, at 11:55 o'clock A.M., a recess was here taken until 2:00 o'clock P. M. of this day, Thursday, November 9, 1944, at which time Court reconvened and the following further proceedings were had herein:)

Mr. Skulason: I will call Mr. Frink.

The Clerk: Will you state your name, please?

Mr. Frink: Frederick W. Frink.

FREDERICK W. FRINK

was thereupon produced as a witness in behalf of the plaintiff in Civil Cause No. 2575 and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Skulason:

Q. You live in Portland, Mr. Frink?

A. I do.

Q. Have lived here for some time?

A. Six years.

Q. And your business, please? [236]

A. I didn't get the question?

Q. Your business?

A. I am a meat buyer for Safeway Stores.

Q. And are there several of those stores under your jurisdiction?      A. Yes, there are.

Q. About how many?

A. Approximately 110.

Q. How many in this locality?

A. There are 45 in the City of Portland and the immediate vicinity.

Q. You buy the meat for those stores, you say?

A. That is right.

Q. Does that include buying turkeys?

A. That includes buying everything sold in the meat department, which includes turkeys.

Q. And you do handle turkeys?

A. Yes, we do.

Q. To a considerable extent?

A. Yes, quite a good supply.

(Testimony of Frederick W. Frink.)

Q. Handle turkeys, of course, then, for the holiday trade? A. That is right.

Q. Do you know Mr. Norton?

A. Very well.

Q. And the Northwest Poultry?

A. Yes, sir.

Q. Have you done business with him and his corporation in the past?

A. Ever since I have been in Portland I have.

Q. What have you bought from him?

A. We have bought practically all of our chickens and a good supply of our turkeys, that is, a good portion of our turkeys.

Q. From him?

A. From him. That is right.

Q. Are you buying from him now?

A. We are buying from him now. We are not buying any turkeys at the present time but we are buying other *turkeys*.

Q. Why aren't you buying any turkeys?

A. Of course we are not buying turkeys because the freeze has been on. At the present time Mr. Norton is not able to sell us any turkeys.

Q. Do you know why?

A. Well, I understand there is some controversy regarding the regulations. He claims, my understanding is, he is not permitted to sell us. I won't put it that way. He can't sell us because he is unable to get as much money from the retail firm as he can sell to the Government.

(Testimony of Frederick W. Frink.)

Q. And is that going to affect your ability to supply your customers with turkeys at all this season?

A. Well, we are really not sure. At least, at the present time [238] it does not look very bright for us.

Q. Aren't there other sources of supply?

A. Well, yes, there are others, but we are not able to get any demands from any of the other sources of supply. They all seem to be in the same predicament Mr. Norton's firm is in.

Q. Yes. Now couldn't you go out to the farmer, to the grower, and get your turkeys?

A. Well, that might be possible. We have never done that. That would be quite a problem, supplying as many stores as we have with the present facilities. Most farmers are not in position to do their dressing, and we certainly are not.

Q. The outlook then for the civilian trade, or the civilians getting turkeys at this time, how would you describe it, Mr. Frink?

A. The understanding I have at the present time does not look very good, unless something changes or something comes up that we know nothing about now.

Q. When do you begin to buy your turkeys for the Thanksgiving trade?

A. We intended to start buying on the 14th. In other words, next Tuesday.

Q. What is the latest date you could start buying and get them?



(Testimony of Frederick W. Frink.)

A. The latest date that we should have at least a portion of our turkeys in to our markets would be the 17th. That would be the very latest we should have them. [239]

Q. Of this month?

A. At least half of them in.

Q. But how soon—what is the latest date you could place an order and have an order accepted for your holiday trade? Is there still time for that?

A. Well, to be quite frank with you, we are going to have to get some accepted or we are going to be in a bad way here. We haven't all of our orders accepted.

Q. In your business you do supply your customers with turkeys for Thanksgiving, don't you?

A. That is right.

Q. And also for Christmas?

A. That is right.

Q. And is the present any better for the Christmas trade than for the Thanksgiving trade now?

A. No, it is not.

Mr. Skulaton: Not any better. You may take the witness.

Mr. Wetherall: We move to strike all of the testimony of this witness on the same grounds as were advanced this morning in connection with the five witnesses who then testified for the plaintiff.

The Court: Motion denied.

Mr. Wetherall: No cross examination.

The Court: He may be excused. Thank you.

(Witness excused.) [240]

Mr. Skulason: Mr. Carlson, will you take the stand, please.

The Clerk: State your name, please.

Mr. Carlson: Harold E. Carlson.

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### HAROLD E. CARLSON

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Skulason:

Q. Mr. Carlson, are you a resident of Portland?

A. Yes, sir.

Q. And how long have you lived here?

A. Approximately twenty-two years.

Q. And what occupation are you in?

A. I am Secretary of the Independent Meat Dealers Association.

Q. What is that organization?

A. Well, it is a trade association, representing the retail meat dealers of Oregon, and Portland particularly.

Q. Is it a large association?

A. We represent in Portland approximately 200 retail meat dealers, in Portland.

Q. By the way, you say you are Secretary?

A. Yes, sir.

Q. Now as such have you anything to do with buying turkeys?

(Testimony of Harold E. Carlson.)

A. No, sir, not directly, only through assisting the individual [241] meat dealers.

Q. Yes. Do you know anything about the present situation as to the probabilities of getting turkeys for the civilian trade for Thanksgiving here?

A. Well, I do know that I have had numerous calls from meat dealers, stating that they are unable to buy any now, are unable to get any commitments to buy any, to any certain extent.

Q. Do you know why?

A. Well, due to some prices, inconsistency, or something pertaining to OPA regulations, where the poultry jobbers have been placed in a position where they are not able to buy the turkeys for civilian use.

Q. Are you acquainted with Mr. Norton?

A. Yes, sir.

Q. How long have you known him?

A. About eight years.

Q. Have you dealt with him in this business?

A. Through our meat dealers, yes.

Q. Does your association buy turkeys from him?

A. Not as a group, but individually the meat dealers do.

Q. Individually they do?           A. Yes, sir.

Q. Now aren't there other sources from which your members could get turkeys?

A. I believe that most of the other jobbers that they have con- [242] tacted are in the same position as Mr. Norton and the only way that they could

(Testimony of Harold E. Carlson.)

buy turkeys would be to buy direct and they are not in a position to go out and deal with the poultry farmers direct.

Q. No; they are not in a position to go and haul their turkeys in? A. That is right.

Q. So the prospects for getting Thanksgiving turkeys here are not so good, are they?

A. That is right.

Q. How about Christinas?

A. The same condition prevails there.

Q. The same thing?

A. So far as I know.

Mr. Skulason: You may cross examine.

Mr. Wetherall: No cross examination.

Mr. Skulason: Thank you, Mr. Carlson. You may go, then.

(Witness excused.)

Mr. Skulason: Is Mr. Gassett here?

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## RAYMOND L. GASSETT

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Skulason: [243]

Q. Your name is Ray Gassett, is it?

A. Yes, sir; Raymond L. Gassett.

Q. And where do you live?

(Testimony of Raymond L. Gassett.)

A. I live in Portland.

Q. You have lived here for some time?

A. For the past thirteen years.

Q. And your business, please, Mr. Gassett?

A. Sir?

Q. Your business?

A. I am connected with the Fred Meyer organization at the present time.

Q. In what capacity?

A. Well, I am handling public relations and buying different commodities.

Q. Do you have anything to do with buying meat?      A. No; not with Fred Meyer.

Q. Turkeys?      A. No, sir.

Q. Do you know anything about the source from which Fred Meyer organization gets its turkeys?

A. Yes, I do.

Q. What is the source?

A. We depended for a good many years—that is, the company has, for about 60 per cent of its supplies, from Northwest Poultry. [244]

Q. Mr. Norton's corporation?

A. Mr. Norton's company.

Q. And do you know anything as to the situation, whether he can supply turkeys now or not?

A. Yes. I omitted to tell you that I am the OPA co-ordinator of Fred Meyer's, so I do know something about why we can't get turkeys.

Q. Now you tell the Court why you can't get them.



(Testimony of Raymond L. Gassett.)

A. Well, due to general orders put out by the District Office in San Francisco, changing our suppliers from processors, or from jobbers to processors and prohibiting them from dealing like they should with the farmer, paying the charge—charging the farmer more for processing turkeys than they should, why, we haven't been able to get the turkeys to supply us, and I understand he is also under embargo to the Government for a certain number of turkeys for the armed forces.

Q. Where does that leave us civilians for turkeys.

A. Well, it looks like we are not going to have any.

Q. We are not going to have any?

A. That is the way it looks like.

Q. This is, I believe, the 9th of November, Mr. Gassett.

A. Yes, sir.

Q. Isn't there still time to secure demands and have orders accepted for the Thanksgiving trade?

A. Oh, yes. [245]

Q. How much time would you have to have? What would you say would be the minimum?

A. Well, we should have at least five days before Thanksgiving, the very minimum, five or six days before Thanksgiving.

Q. To get your turkeys?

A. That is right.

Q. And how about the Christmas trade?

A. Well, I would say about the same—five or ten days before Christmas.

(Testimony of Raymond L. Gasset.)

Q. Now when you say you are OPA co-ordinator, what does that mean exactly?

A. That means that I try to sell them our OPA problems, which are many and numerous.

Q. And do you regard this as an OPA problem?      A. Sir?

Q. Do you regard this——

A. I do, yes, sir.

Q. ——as an OPA problem?      A. Yes, sir.

Q. And your solution for it, then?

A. Well, the only solution that I could offer would be to do away with a couple of orders they have given out of the District Office down here and let the M.P.R. Regulation that those general orders down here in San Francisco supersede take its rightful place where it belongs. [246]

Q. Put those orders in their place where they belong, you say?

A. The General Maximum Regulation, or the Maximum Price Regulation for handling turkeys is all that we need out here.

Q. And ignore or do away with the regional orders from San Francisco?

A. That is right, the regional orders, I think G-3, and I forget the other one.

Q. G-93 and 9-3, eh?      A. That is right.

Q. Related numbers?      A. Yes, sir.

Q. That is your solution?      A. Yes, sir.

Q. And that you think would be a good solution?

A. I do.

(Testimony of Raymond L. Gassett.)

Q. Do you feel that it is necessary to loosen up this turkey situation?

A. Well, if we want to supply the civilian trade and the people who are engaged in war activities in this territory. We have numerous customers come in each day asking us to allow them to place their orders for turkeys. We could take orders every day for fifty or a hundred in each market that we have for delivery for Thanksgiving, if we were sure we were going to get them. We don't think we are going to get any turkeys, so we are not taking any orders. [247]

Mr. Skulason: You may take the witness.

Mr. Wetherall: No cross examination.

Mr. Skulason: That is all, sir, and thank you for coming.

The Witness: Yes, sir.

(Witness excused.)

Mr. Skulason: Mr. O'Neil, please.

The Clerk: Will you state your name, please.

Mr. O'Neil: George H. O'Neil.

## GEORGE H. O'NEIL

was thereupon produced as a witness in behalf of the plaintiff in Civil Action No. 2575 and, having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Skulason:

Q. Mr. O'Neil, you live in Portland?

A. Yes, sir.

Q. How long have you lived here?

A. I have lived here for about thirty-one years.

Q. What is your occupation, please?

A. I am a restaurant operator, with the Bohemian Restaurant.

Q. Is there any association of restaurant proprietors or operators here?

A. Yes. I happen to be at the present time President of the Restaurant Association in Portland.

Q. How many members does that have? [248]

A. Well, we have roughly 200 members, but about 125 are paying dues, paying members.

Q. Has that association existed for some time?

A. Yes, it has, for about the last twelve years.

Q. How long have you been proprietor of the Bohemian?

A. Since 1927 or '29, rather.

Q. Now does your association buy turkeys for the holiday trade?

A. I believe that, without exception, all of the members of the Association do, because they are all restaurant operators.

(Testimony of George H. O'Neil.)

Q. Yes. Has there been any difficulty about securing turkeys for the trade at this time?

A. Yes, there has been some difficulty.

Q. Will you explain to the Court, please.

A. Well, the difficulty that most of the restaurant operators have experienced up until now is that a lot of the operators have always insisted on getting the very best turkeys, the No. 1 family turkeys, and they haven't been able to do that, which was stopped because of the Government order that the Army should receive all the No. 1's and there hasn't been, at least to my knowledge, a sufficient amount of the other birds to let them get what they wanted, or the quality that they desired.

Q. Now have you investigated the situation at all to ascertain the reason for this condition?

A. The reason that they could not?

Q. Get turkeys?

A. Get turkeys? Well, as I said, that some of them didn't take the turkeys because they were not of the quality that they insist on, and the next answer would be that there was not sufficient amount to receive the turkeys.

Q. Is this a usual annual situation. or is it unique?

A. No, this is not a usual situation. This is a very unusual situation.

Q. Is there any agency of your Association for the buying of turkeys wholesale?

A. There isn't any particular agency but they do buy from different firms in town that handle the turkeys.



(Testimony of George H. O'Neil.)

Q. Do you know Mr. Norton here?

A. Yes, sir, I do.

Q. Known him for some time?

A. Yes, quite some time. I believe ever since he has been with the Northwest Poultry.

Q. Have you dealt with his corporation?

A. Yes, we have.

Q. Bought turkeys from them?

A. That has been our main commodity from there.

Q. Now if you can't get any turkeys from the Northwest Poultry this year, what are you going to do about turkeys for the holiday trade and Thanksgiving trade?

A. Well, I am afraid that most of the members of the Association will be inclined to be short, because if they don't get [250] them from Mr. Norton and from some of the other wholesale houses that they have been used to getting them from in town, they will not have enough for their Thanksgiving supply; at least, to begin with, first.

Q. And as to the Christmas business?

A. Well, as far as the Christmas business is concerned, the situation might have been relieved somewhat by the amount of turkeys that the Army had secured.

Q. But of course you have to get the turkeys from the same sources? A. Yes.

Q. For Christmas as for Thanksgiving?

A. I believe, without exception, that most of the

(Testimony of George H. O'Neil.)

places in town depend on the Northwest Poultry for their turkeys, because they have been able to supply them in whatever amounts they wished; and I would also like to say that between Thanksgiving and Christmas, that the restaurant operators who wish to secure the prime birds to put away in storage, to carry them through the rest of the year, they also try to get them at that time.

Q. Have you tried to obtain turkeys from Mr. Norton's corporation?

A. Yes, I have, and I have received turkeys.

Q. You have what?

A. I have received turkeys from him.

Q. You have received some turkeys from him?

[251]

A. Yes.

Q. Has he been able to supply you with what you need, or what you ordered?

A. Well, I think we, at the Bohemian Restaurant, come in the category of being one of the oldest customers they have there. They make it a practice to try and treat their oldest customers as well as they can, and while we haven't been able to secure all that we wanted just when we wanted them, we have been quite well taken care of. That is, on not No. 1 birds but the B birds, the next grade below.

Q. But there has been a difference in your ability to secure turkeys this season from the past seasons?

A. Yes. We haven't had the—well, we haven't been able to get them in any amount that we wish. We take what we can get.

(Testimony of George H. O'Neil.)

Mr. Skulason: You may take the witness.

Cross Examination

By Mr. Wetherall:

Q. Mr. O'Neil, I believe you said you had received some turkeys from Northwest Poultry. Have you, or did you receive turkeys from Northwest Poultry on and prior to November 5, 1944?

A. Yes.

Q. What grade turkeys were they?

A. B grade.

Q. B grade? A. Yes. [252]

Mr. Wetherall: That is all.

Mr. Skulason: That is all, Mr. O'Neil. Thank you.

(Witness excused.)

Mr. Skulason: Now Mr. Norton, you may take the stand again, please.

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C. W. NORTON

thereupon resumed the stand as a witness in behalf of the plaintiff in Civil Action No. 2575 and further testified as follows:

Direct Examination

By Mr. Skulason:

Q. Will the Bailiff please hand the witness these two papers. What have you there, Mr. Norton?

A. The first one I have here is the release from Washington, D. C., to the District OPA Offices, per-

(Testimony of C. W. Norton.)

mitting us to act as an agent for the Government in the sale of turkeys to the Government.

Q. That is dated what date?

A. That is dated the 27th of September.

Q. And the other one?

A. The other is Amendment No. 1 to Order No. G-3 from San Francisco, from the OPA office of San Francisco.

Q. Defining who is a wholesaler?

A. That is correct. It is Amendment No. 1. [253]

Mr. Skulason: We offer them in evidence, your Honor.

The Court: Admitted.

(Teletype of September 27, 1943, from Richard Gerould, Division Counsel for Food, to "All Cities on Teletype Circuit", so offered and received, was marked Plaintiff's Exhibit 3, and "Amendment No. 1 to Order G-3 under Section 1429-14 (e) of Revised Maximum Price Regulation No. 267, as amended", so offered and received, was marked Plaintiff's Exhibit 4.)

(Testimony of C. W. Norton.)

PLAINTIFF'S EXHIBIT No. 3

Poultry, Eggs & Dairy Products

Price-Legal

AARubin/el

Teletype

To: All Cities on Teletype Circuit

Attention: All OPA Head Attorneys

All Regional Price Executives

In Teletype Broadcast 9/27/43, This Office Stated That Distributors Could Not Act As Selling Agents for Processors, Deliver the Turkeys to the Army at Premium Prices Established for Sales to the Government and Then Divide the Premium With the Processor. It Was Held That Such Action of Dividing Premiums Constituted Definite Violation of RMPR 269 Since Only the Government Was Permitted to Pay the Premium Price for Turkeys.

After Very Careful Consideration of All Aspects of the Problems Involved in This Ruling (Which Has Been Reexamined Because of Army Difficulties in Obtaining Its Poultry Requirements), It Has Been Decided to Modify the Interpretation to Some Extent. Accordingly, This Office Now Finds That a Division of Premiums for Sales to the Government Between the Agent-Distributor and the Principal-Processor Is a Violation of the Regulation Only Where the Total Amount Returned to the Principal Exceeds the Maximum Price Established by the Regulation for a Sale by the Principal to the Government. The Agency Fee or Charge May



(Testimony of C. W. Norton.)

Not, However, Exceed That Permitted by MPR 165. An Agent May Thus Sell Poultry to the Army for the Account of His Principal and Return to His Principal Any Amount Not in Excess of That at Which the Principal Himself Could Have Sold the Poultry to the Army. This in Effect Merely Results in the Principal Sharing Part of His Maximum Selling Price With Another Who Performs Certain Functions for Him, and No Sale at Over-Ceiling Prices Is Involved. Obviously, However, This Applies Only Where a Bona Fide Principal-Agent Relationship Has Clearly Been Established, and the Processor Cannot Sell the Poultry to the Distributor at a Premium or a Price in Excess of That Established for Such Sale Between the Types of Parties Involved, Even Though the Processor Could Have Sold the Poultry Directly to the Army at a Premium.

This Interpretation Applies Only Where the Principal Receives No More From His Agent Than He Could Have Obtained Had He Sold the Poultry Directly to the Government. It Does Not Permit Any Person to Share With or Return to Any Other Person Who Could Not Himself Have Sold Poultry Items at That Markup Any Part of Any Amount Which Includes a Markup Obtained for the Sale of Poultry. Any Such Sharing of a Distributive Markup or Margin With One Who Could Not Himself Have Added Such Markup or Margin to the Applicable Base Price Is a Violation of RMPR 269, and Will Be Specifically Spelled Out As a

(Testimony of C. W. Norton.)

Violation in the Next Revision of the Regulation. In Other Words a Seller May Not Obtain a Higher Price by Selling Through An Agent Than He Could If He Had Made the Sale Directly. This Prohibition Applies Whether or Not the Person Making the Sale Is An Agent of the Person to Whom All or Part of the Price Received for the Poultry Is to Be Returned. Nor Does This Interpretation Permit the Sharing or Splitting of Any Part of a Sale Price or Permitted Decrease in Other Instances.

RICHARD GEROULD

Division Counsel for Food

AARubin/el

10/2/44

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PLAINTIFF'S EXHIBIT NO. 4

Office of Price Administration

San Francisco Regional Office

Region VIII

Amendment No. 1 to Order G-3 Under Section  
1429.14 (e) of Revised Maximum Price Regu-  
lation No. 269, As Amended

POULTRY

Definitions of Processing Plant and Wholesaler

For the reasons set forth in an opinion issued simultaneously herewith, and under the authority vested in the Regional Administrator of the Office

(Testimony of C. W. Norton.)

of Price Administration by Section 1429.14 (e) of Revised Maximum Price Regulation No. 269, and the authority reserved in paragraph (c) of Order G-3 issued under Section 1429.14 (e) of Revised Maximum Price Regulation No. 269, and with the approval in writing of the Price Executive of the Poultry, Eggs and Dairy Branch of the Food Division of the Office of Price Administration, and the Division Counsel for Food of the Office of Price Administration, said Order G-3 is hereby amended in the following respects:

(a) The two undesignated sentences of paragraph (b) are amended to read as follows:

The definition of "wholesaler" set forth in Section 1429.21 (b) (5) of Revised Maximum Price Regulation No. 269, as amended, shall be modified as follows: "Wholesaler" means any person other than a "processing plant" who possesses all of the following characteristics:

(b) Paragraph (b) (ii) is amended to read as follows:

He must maintain at the particular place where he is located, a business establishment where he receives and stocks poultry items, and where he employs a personnel which physically handles and distributes 75% or more of his dollar volume of such poultry items to individual retail stores or institutional, industrial or commercial users, Naval or Military estab-

(Testimony of C. W. Norton.)

lishments, or the War Shipping Administration.

This amendment shall become effective October 15, 1944.

(56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E. O. 9250, 7 F. R. 7871; E. O. 9328, 8 F. R. 4681).

Issued this 11th day of October, 1944.

/s/ GEORGE MONCHARSH

Acting Regional Administrator

Office of Price Administration  
San Francisco Regional Office  
Region VIII

Opinion Accompanying Amendment No. 1 to Order G-3 Under Revised Maximum Price Regulation No. 269, as Amended.

## POULTRY

Definitions of Processing Plant and Wholesaler

The accompanying amendment to Order G-3, issued under Section 1429.14(e) of Revised Maximum Price Regulation No. 269, amends the modified definition of "wholesaler" as set forth in paragraph (b) of Order G-3. The purpose of the amendment is more clearly to define the functions of wholesalers.

The present wording of paragraph (b) of Order G-3 does not clearly state that a "wholesaler" is a person other than a "processing plant". Neither

(Testimony of C. W. Norton.)

does the wording of sub-paragraph (b)(ii) state to what extent sales of poultry items must be made to individual retail stores, or institutional, industrial, commercial users, Naval or Military establishments, or the War Shipping Administration. This resulted in circumvention of the intended effect of Order G-3.

Therefore the definition of "wholesaler" set forth in Order G-3 is amended by specifically providing that a "wholesaler" means any person other than a "processing plant". The order also amends sub-paragraph (b)(ii) by requiring that a "wholesaler" must maintain at the particular place where he is located, a business establishment where he receives and stocks poultry items and where he employs a personnel which physically handles and distributes 75% or more of his dollar volume of such poultry items to individual retail stores, institutional, industrial, or commercial users, Naval or Military establishments, or the War Shipping Administration.

The accompanying amendment will allow "wholesalers" to perform their normal distributive functions and will aid in the enforcement of the regulation. It will not increase the maximum price at which poultry items may be sold at retail, or to ultimate consumers, including commercial, industrial, institutional or government users. Neither will it have the effect of decreasing the margin of profit for retail sales of poultry items nor create or tend to create a poultry shortage or need for in-



(Testimony of C. W. Norton.)

crease in poultry prices in another locality. Therefore, the order is consistent with the provisions of Executive Order 9328, and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended.

Issued this 11th day of October, 1944.

/s/ GEORGE MONCHARSH

Acting Regional Administrator

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Q. Just one question or so, Mr. Norton, about this turkey situation. You have testified somewhat about it, as to the source from which the trade can obtain turkeys for civilian consumption. At this time what can you say?

A. Well, I see no way in which the civilian trade can even hope to get any turkeys as long as these two orders stand, and particularly while we are acting as agent for the Government, and by acting as an agent for the Government we are permitted to pay the growers a cent a pound more for turkeys than we would buying for civilians, and the Government, before they were released—before the order, War Food Order 106 was released, all of the wholesalers that were in possession—that were dressing turkeys for the Government, had to commit [254] themselves for a definite amount of turkeys covering the next four months. In our case we are committed to the end of February for 6,000,000 pounds of turkeys. Now then, War Food wanted to get the order released so the civilians could get turkeys and under

(Testimony of C. W. Norton.)

the conditions we are operating under here, where we are able to pay the grower a cent a pound more, if the OPA classes us as a processor and not a wholesaler certainly we could not wholesale turkeys. Consequently we would have to give them all to the Government. We are allowed a markup in selling to the Government. Everyone is. Processor and wholesaler alike is allowed a markup in selling to the Government. That markup is a cent a pound in selling to the Government. I see no way in the world in which civilians can ever pay to get any turkeys, unless they secure them in the normal channels through wholesaler dealers in Portland or the Portland territory.

Q. Mr. Norton, how critical or imminent is this? What time would you have to have to get ready to fill an order for the Thanksgiving trade?

A. The most serious part of it, as I see it, I was in Seattle last week and the meat markets up there were all advertising turkeys and were taking orders for turkeys. They were securing them through the cooperative up there at Seattle. One of the big organizations up there agreeing to furnish them, was the Washington Cooperative Association, advertising turkeys and [255] taking orders. And that is the customary practice of the trade down here. If the meat market will come in and inquire about turkeys, and we commit ourselves, they in turn go out and take orders from the housewife. If she wants a 15-pound turkey they take her order for delivery on such and such a date. The serious part of it now

(Testimony of C. W. Norton.)

is, they are not able to take any orders and it is going to be down here in a few days, until they will just be going out in the country, buying on the black market in order to get a few live turkeys. A lady called me last week and wanted to know if 52 cents a pound was according to the live ceiling. She bought one out in the country in order to have a live turkey for 52 cents.

Q. Would there still be time if these orders were set aside and held inoperative, to supply the holiday trade? A. By Monday?

Q. By next Monday?

A. By next Monday.

Q. That would be the dead line, so far as you are concerned?

A. I believe it would—Monday or Tuesday. The difficulty is, we dress in our plants at the present time approximately a quarter of a million pounds. The civilians want hen turkeys. They want certain sizes. It takes a lot of turkeys to supply the people, approximately 600,000 in this trade territory. They all want one turkey.

Mr. Skulason: You may take the witness. [256]

Mr. Wetherall: No cross examination.

Mr. Skulason: That is all, Mr. Norton.

(Witness excused.)

Mr. Skulason: That is our case, your Honor.

The Court: Have you got any testimony?

Mr. Wetherall: Your Honor, we want to make the record clear at this time, that we object to the

testimony of all of the witnesses called by the plaintiff, and we move to strike all of their testimony, on the grounds previously indicated, and likewise the documentary evidence which has been introduced in the case, and at this time we renew our motion to dismiss the complaint, upon the grounds stated in our written motion.

The Court: I will overrule it at this time. Now go ahead. You will have to explain this to me, Mr. Skulason.

Mr. Skulason: I beg your pardon?

The Court: You will have to explain this to me.

Mr. Skulason: Well, the turkey situation?

The Court: Well, you will have to tell me about G-3 and G-93, and this G part of it.

Mr. Skulason: All right, your Honor: I confess that when Mr. Norton brought this to me I didn't know anything about processing turkeys, or killing or hauling them, or wrapping them, boxing them, or anything else, and he has had to educate me to the best of his ability until I know a little about it, [257] and starting here then with G-93, this G-93 was issued on the 2nd day of May, 1944, from the Regional Office in San Francisco and it is entitled "Custom Dressing of Turkeys", and then it says that, "For the reason set forth in an opinion issued simultaneously" with this order number section so and so, "it is hereby ordered." This is the beginning of this.

"(a) The adjusted maximum price for the service of custom processing of live turkeys in Region 8 shall be as follows:

"Type of Service	Hens	Toms
"Kill and haul	\$ .30 per head	\$ .35 per head
"Loose	.035 per lb.	.03 per lb.
"Boxed	.045 per lb.	.04 per lb

"(b) Definitions:" And the first definition is, "the service of custom processing of turkeys 'boxed' means the service of assembling, killing, bleeding, plucking, chilling, grading, head-wrapping, and boxing.

"(2) The service of custom processing of turkeys 'loose' shall be as defined in (1) above except boxing."

So these turkeys that we are processing loose and are required to process under this order at so much per pound instead of so much per head, this processing is the assembling, the killing, the bleeding and plucking and chilling and grading and head-wrapping.

Now Region 8 means the States of California, Washington, [258] Nevada, Oregon, except Malheur County, and Arizona, except those portions of Coconino County and Mojave County lying north of the Colorado River, and so forth, and certain counties in Idaho.

This was the first order——

The Court: That gentlemen has remained in attendance. Maybe he would like to come in where he was a witness this morning. Would you like to come in so you can hear better?

(The gentlemen referred to here came within the railings.)



The Court: Put him right over there, Bailiff.

Mr. Skulason: Accompanying this Order G-93 there was issued, from the office here in Portland, an order on May 8th, effective date May 8th. This we have identified as Exhibit B, and this Exhibit B repeats the ceilings as to processing—calls them ceilings. It repeats the definitions, and then it modifies the definition as to Region 8 and says that Region 8 means States of Washington and Oregon except Malheur County, and then interpretations, and Interpretation No. 2 I think is the one we are chiefly interested in.

Oh, yes. I will give this first and then revert to that.

Now the above prices on a pound basis, and still on a kill-and-haul basis, as things stood then, are the only prices which may be charged for processing services. Any [259] charge of less than the prices fixed in this order will be considered an attempt to evade or revise the Maximum Price Regulation 569, which has reference to agricultural products.

“Charges for more than these prices would be an outright violation of this order.”

In other words, as we understand this here, there is not a Maximum Price Regulation for the service but an absolutely inflexible charge to be made, no more and no less, and we make the point, your Honor, that under the Emergency Price Control Act such a regulation must be invalid because that deals only with the maximum prices. If this had been only a maximum price regulation we could

have gone ahead. We could have charged the less and we could have obtained the birds from the growers. But now we must charge them this, and as your Honor will remember the testimony, that raises the expense to the grower up to 72 cents on ordinary 15-pound birds per head, from 30 or 35 cents, and up as high as \$1.05 per head, according to Mr. Perry from Seattle, upon heavy birds, and we can claim the practical result of that is that we can't get the birds.

Now then, if we had any latitude under these orders of dividing with the grower some of this expense, rebating to him some of it, it might work. That is what the cooperatives are allowed to do—have been allowed to do.

Now before I leave this order and definition here, [260] “The service of custom processing of turkeys” is the same as here, as in the other G-93.

Then it says: “(3) The service of custom processing of turkeys ‘kill and haul’ means assembling, killing, bleeding and plucking”, and then in parentheses, “This charge should be applied by dealers who do not have the proper facilities for chilling, grading, head-wrapping and boxing.” Of course Mr. Norton has all of these facilities, and all of these people dealing in this business have coolers.

Now then, that was the situation when this suit was commenced and we attack those two orders. your Honor, in this suit.

Then there comes still another order, known as G-3, issued on August 30th, 1944, which we also attack, and which, with certain amendments to it,

has been the subject of examination and scrutiny here by the last few witnesses—with those witnesses and with Mr. Norton.

Now this G-3, which we will say is all wrong, purports to define a processing plant, and a “Processing plant means any business establishment which purchases or receives live poultry items and which converts the larger part of dollar volume of all poultry items handled, from live into dressed, drawn, or quick frozen eviscerated poultry.”

“ ‘Processing plant’ does not mean any person who does 75 per cent or more of his dollar volume in the distribution as a [261] ‘wholesaler’ of poultry items converted from live to dressed,” and so forth, “and who in the course of such distribution as a ‘wholesaler’, incidentally converts live birds into dressed, drawn,” etc.

Then the definition of a wholesaler set forth in Section so and so, “shall be modified as follows:

“A wholesaler means any person who possesses all of the following characteristics:

“(i) He must customarily receive, or purchase and receive poultry items in wholesale quantities.

“(ii) He must maintain at the particular place where he is located, a business establishment where he receives and stocks poultry items, and where he employs a personnel which physically handles and distributes such poultry items to individual retail stores and institutional concerns.

“(iii) He must customarily sell or distribute poultry items in quantity lots which are smaller than his purchases or receipts.

“(iv) He must customarily sell or distribute at least 75 per cent of his dollar volume of poultry items, exclusive of sales to the United States Government, or any agency thereof, for ultimate consumption within a radius of 100 miles from his place of business.”

Then that applies to Arizona, Nevada—a part of Washington it does not apply to—and Utah. [262]

Now these are the three orders that we have attacked, and then there came out another one.

The Court: Is G-3 a regional order?

Mr. Skulason: Yes, your Honor. G-3 is a regional order; so is G-93, and what we have called Exhibit D that came out on May 4th was issued from the office here, as I understand it. Then came another regional order from San Francisco, and that is Amendment No. 1 to G-93, and that——

The Court: The date?

Mr. Skulason: The date of that is September 19th, 1944, and that provided that the maximum price for the service of custom dressing live turkeys into dressed turkeys in Region 8 shall be as follows:

For the service of kill and haul 2.8 cents per pound.

There they abandoned the per-head service charge and put the kill and haul on the common basis, the same as the dressing and processing of loose and boxed turkeys.

For the service of kill and haul, 47.1 per cent of the hot weight when computed on a hot-weight basis.

For the service of dressing turkeys in boxed form 3.8 cents per pound.

And then there are definitions about the same as before, and the region is again defined.

"This order shall not apply to any processor of turkeys who dresses turkeys for individuals for their own [263] consumption and not for resale."

Then that being the situation, and the complaints being many and loud and long, the office in Washington attempted to relieve the situation and find a way out. Mr. Norton and his corporation could not function on this basis at all, for the reasons I have adverted to, the expense to the grower, so there came from Washington—not from San Francisco—a teletype to All Cities on Teletype Circuit, All OPA Head Attorneys, All Regional Price Executives, dated October 2nd, 1944. They referred to a teletype broadcast of September 27th, 1943. Now this says: "After very careful consideration of all aspects of the problems involved in this ruling"—which they dated as of September 27th, '43—maybe I had better read the first part of it.

"In Teletype Broadcast 9/27/43, this Office stated that distributors could not act as selling agents for processors, deliver the turkeys to the Army at premium prices established for sales to the Government and then divide the premium with the processor. It was held that such action of dividing premiums constituted definite violation of RMPR 269 since only the Government was permitted to pay the premium price for turkeys.

"After very careful consideration of all aspects of the problems involved in this ruling (which has been re-examined because of Army difficulties in



obtaining its poultry [264] requirements), it has been decided to modify the interpretation to some extent. Accordingly, this office now finds that a division of premiums for sales to the Government between the agent-distributor and the principal-processor is a violation of the regulation only where the total amount returned to the principal exceeds the maximum price established by the regulation for a sale by the principal to the Government. The agency fee or charge may not, however, exceed that permitted by MPR 165. An agent may thus sell poultry to the Army for the account of his principal and return to his principal any amount not in excess of that at which the principal himself could have sold the poultry to the Army. This in effect merely results in the principal sharing part of his maximum selling price with another who performs certain functions for him, and no sale at over-ceiling prices is involved."

Now that we understood to mean that the Northwest Poultry, the plaintiff here, could enter into agency contracts with the growers of turkeys and, as has appeared in evidence, I believe, we prepared a very brief agency contract, which I will say to your Honor I submitted to the OPA attorney over the telephone and he had no objection to it, and I think I submitted it again. Anyhow, it was accepted, and the result has been, the practical result has been that Mr. Norton has entered into agency contracts to act as agent for the growers of turkeys and has been able to hold his business because of [265] that, because he is now allowed to

rebate or return to the grower a portion of the processing charge under these former orders. So now, as far as these orders as thus modified from the main office are concerned, the plaintiff is able to carry on, but there still remains this Amendment No. 1 to G-3, issued October 11, 1944—that is the Plaintiff's Exhibit 4 here—which defines, or re-defines a wholesaler, and it says, "A wholesaler means any person other than a processing plant which possesses all of the following characteristics." Well, that puts us out in the cold right away, because we have a processing plant. That is the main part of our business. So we are entirely precluded from acting as wholesaler, and your Honor has heard the testimony here of what that results in. It cuts off a very large part of the plaintiff's business and results in this inconvenience of the community at large that your Honor has heard about.

So now we are asking the Court, on the grounds stated in our complaint, to find and rule that these orders are all invalid; that G-93 and G-3 are invalid, even as amended, and we want them held invalid because of what we know is in preparation here against the plaintiff in this case. There is being prepared in this field a case against Mr. Norton and his corporation for some kind of penalty. We could have called in here enough people to fill half of this courtroom, I think, who have been contacted by these people in the field [266] for the purpose of obtaining evidence of violations of G-93 and G-3, and we think that we are entitled to have them held

inviolable and thus save the Northwest from the consequences which are certainly in preparation and in the offing.

That is what I have to say now about G-93 and G-3 as modified and as amended, except this matter of wholesaler. Whatever the Court may do about this other order we feel very strongly that the Court should at least hold invalid this one which deprives the plaintiff of being a wholesaler, as being entirely unwarranted and unreasonable; and throughout this whole case, your Honor, of course there runs the undisputed fact that a certain kind of business practice, certain methods have been followed in this locality for years, and years, and years here, and the statute, of course, your Honor knows, says the business practice shall not be disturbed.

Now of course this whole thing is predicated on the Act of Congress adopted in 1942, known as the Emergency Price Control Act, and if the Court will bear with me I will read the portion of that preamble to show what that Act really is and why it was adopted.

“It is hereby declared to be in the interest of the national defense and security, and necessary to the effective prosecution of the present war, and the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted and abnormal increases in prices and rents, to eliminate and [267] prevent profiteering, hoarding,” and so forth. And we propose to provide price schedules, and those schedules are all maximum price schedules. I don’t

think it needs any argument to satisfy anyone as to the intent and purpose of this Act. It was to put a ceiling on things, to establish a maximum price beyond which it would be unlawful to go.

Now I have read this Act, and counsel here, my associate has read it, and so have others. and I can't find anything of this Act that in any way authorizes such an order as G-93 fixing, not a maximum but a fixed absolute price. "This you must charge the grower or take the consequences. no more and no less." So on that point. on the theory that there be no authority for the issuance of such a regulation, we refer to the Act itself. Then this other point, as I say, that runs through the case, "The powers granted in this section", that is about regulations.

"First, no power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of Section 3.26."

And then, "The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods or means or aids to distribution established in any industry, or changes in established rental practices except where such action is affirmatively found by the Administrator to be necessary to [268] prevent circumvention and evasion of any rental regulation, order, price schedule or requirement under this Act."

So, your Honor, that is the case, and I hope I have been able to make myself understood so far as I understand it.

The Court: What is the advice that your client is acting under now?

Mr. Skulason: He is now acting under that teletype. He is now acting under the agency arrangement.

The Court: Why doesn't he continue to act under it?

Mr. Skulason: So far as processing turkeys is concerned. But now the grower come in to him.

The Court: What is the advice that you said you gave him?

Mr. Skulason: Oh, yes. That came from this matter, your Honor, of what he should do when he was informed that he must not act as wholesaler and was told that if he did attempt to act as a wholesaler that he would be punished, and fined, and so on and so forth; and they used the word criminally" then.

The Court: How did he sell to the Army and the Navy?

Mr. Skulason: Under the agency. This was under the agency agreement to the grower. It covers—this letter read here was designed—and there are two pages of it, your Honor—to facilitate the selling of turkeys to the Government.

The Court: You sent me a copy. I have it here.

Mr. Skulason: You have it there?

The Court: Yes.

Mr. Skulason: And so he can operate now. Suppose he had no other business at all with anybody except the Government.



The Court: How is his problem with civilians' supplies different than his problem with the armed forces?

Mr. Skulason: Civilian business? He hasn't any civilian business. He is cut off from it. This teletype relates only to supplying the Army.

The Court: Yes. We understand that. In other words, if the teletype was not limited to the supplies to the Army it would be all right?

Mr. Skulason: It is limited.

The Court: If it were not limited to supplies to the Army it would be all right, wouldn't it?

Mr. Skulason: Yes; I think it would. I think it would.

The Court: Since he got the teletype has he attempted to get an extension of it to cover the civilian problem?

Mr. Skulason: Well, shall we have him answer that, your Honor? I don't know just what he has done.

The Court: You can answer it and back it up with testimony later.

Mr. Skulason: Yes. Will you pardon me a moment?

The Court: Yes.

(Mr. Skulason here conferred with Mr. Norton.)

Mr. Skulason: We have tried that, your Honor. I didn't think at the time when I had him on the stand that it was [270] relevant, perhaps, but I will put this in evidence a little later. On the theory

it may go in I will just read this, since your Honor asked about it.

This is dated October 30th, in Washington, and it is signed by K. W. Kerkey, Chief O.F.C. District:

“At request of T. G. Stitts, Government Chairman, you are personally invited to attend a two-day”—it is addressed to Mr. Norton—“to attend a two-day meeting of the poultry industry Advisory Committee beginning November 10 at ten A.M. in Room 3106 South Agriculture Building, Washington, D.C., to discuss ways and means of bringing about a better procurement rate of poultry for armed forces. Attendance limited to members only. Please advise whether or not you will attend.”

The Court: My question was, has he made an effort to extend the agency arrangement to civilian transactions?

Mr. Skulason: Yes, as a wholesaler. You will recall that he testified that he contacted one of the officials here, one of the local officials.

The Court: Has he made an attempt at the same source that gave him this teletype? You mean in Washington?

Mr. Skulason: Yes.

The Court: The same source in Washington?

Mr. Skulason: Yes. He has another wire dated November 6th—that is getting close to modern times—addressed to [271] Marshall R. Diggs, his attorney in the Colorado Building, Washington, D.C.:

“Please advise if any provision made for sales of turkeys to civilian trade on an agency agree-

ment the same as on sales to the Government. Also advise if we correct in continuing to act as the growers' agent on our Government sales now that the embargo is lifted." It was lifted on the 5th, was it?

Mr. Norton: The end of the 5th.

Mr. Skulason: "Stop. The date of our case against Chester Bowles will be set today as the judge advised he is taking jurisdiction." Well, maybe I assumed too much there. "The civilians in Oregon and Washington will not have any turkeys for Thanksgiving unless G-93 and G-3 are canceled and doubt if can get Court decision in time for Thanksgiving. Personal regards. C. W. Norton, President, Northwest Poultry and Dairy Products Co."

Mr. Norton: If he wants to know, I got one today.

Mr. Skulason: All right. I am assuming these will go in evidence. That is the reason I am reading them now. I intend to call Mr. Norton to have him testify to his efforts to get away from this non-wholesaler civilian business. I guess you had better take the stand.

## C. W. NORTON

was thereupon recalled as a witness in behalf of the plaintiff in Civil Action No. 2575, and, [272] having been previously sworn, further testified as follows:

## Direct Examination

By Mr. Skulason:

Q. Mr. Norton, have you been making some efforts to get relief as regards your capacity as a wholesaler in connection with the civilian consumption of turkeys?

A. At the meeting in Chicago, in the early part of September, when Ernest Eisenberg, the Chief Attorney for the OPA, and Waldo Haldeman, the Chief of the Dairy and Poultry Branch of the OPA in Washington, were there. They had three different meetings. One of the meetings was pertaining to the agency meeting with the growers—for the growers in sales to the Government. We also at that time were considering, or had been considering being permitted to pay a dividend to the growers the same as the Cooperative Association that has been carried on from that date until now. I talked to Washington at noon, during recess, to our attorney in Washington and——

Q. Let me show you this, first. What is that, Mr. Norton?

A. That is a wire that I had sent back to Mr. Kerkey, Chief of the Office of Distribution, War Food Administration, Washington, D.C.

Q. He is in charge, you say, of what?

(Testimony of C. W. Norton.)

A. He is the Chief of the Office of Distribution, War Food Administration, Washington, D.C.

Q. What is the date of that wire? [273]

A. October 31st.

Q. Read it.

A. "Impossible to attend Washington meeting at this season of year. Stop. The San Francisco Regional OPA Office issued two orders that has made it practically impossible to secure turkeys for the armed forces. They are Regional Order G-93 and G-3. Miss Alice Deppers has full particulars. If wish any information from this territory please advise. Regards."

Q. Was that in response to this?

A. The wire asking me to come to Washington.

Q. Yes. Then have you sent any further wires?

A. Excepting to our attorney, Marshal Diggs.

Mr. Skulason: Here is one from Marshall R. Diggs. May I offer that in evidence, your Honor.

The Court: It is admitted.

(The telegram dated October 31, 1944, C. W. Norton, President, to K. W. Kerkey, Chief Office of District WFA, Washington, D.C., so offered and received, was marked Plaintiff's Exhibit 5.)



(Testimony of C. W. Norton.)

PLAINTIFF'S EXHIBIT No. 5

(Western Union Telegram)

NW2 L G Oct 31 1944 K W Kearkey Chief Office  
of Dist WFA Washington D C

Impossible to Attend Washington Meeting at This  
Season of Year Stop The San Francisco Regional  
OPA Office Issued Two Orders That Has Made It  
Practically Impossible to Secure Turkeys for the  
Armed Forces They are Regional Order G-93 and  
G-3 Miss Alice Peppers Has Full Particulars If  
Wish Any Information From This Territory  
Please Advise Regards

C W NORTON,

President Northwest Poultry  
and Dairy Products Co.

OK RNW2 WUAG.. Thank U.. (930 AM).

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The Witness: In talking with the attorney at  
noon today——

Mr. Skulason: Let's identify that first. What  
is that?

A. That is our wire to Marshall R. Diggs, Colo-  
rado Building, Washington, D.C.

Q. Read that for us, please. [274]

A. However, the one I just read was from me  
to Mr. Kerkey.

“Please advise if any provision made for sales  
of turkeys to civilian trade on an agency agree-  
ment the same as on sales to the Government.

(Testimony of C. W. Norton.)

Also advise if we correct in continuing to act as the growers' agent on our Government sales now that the embargo is lifted. Stop. The date of our case against Chester Bowles will be set today as the judge advised he is taking jurisdiction. The civilians in Oregon and Washington will not have any turkeys for Thanksgiving unless G-93 and G-3 are canceled and doubt if can get Court decision in time for Thanksgiving. Personal regards."

Mr. Skulason: I offer that in evidence.

The Court: It is admitted.

(The telegram dated November 6, 1944, C. W. Norton, President, to Marshall R. Diggs, Colorado Building, Washington, D.C., so offered and received, was marked Plaintiff's Exhibit 6.)

#### PLAINTIFF'S EXHIBIT No. 6

(Western Union Telegram)

NWI L G Nov 6 1944 Marshall R Diggs Colorado  
Bldg Washington D C

Please Advise If Any Provision Made For Sales Of Turkeys To Civilian Trade On An Agency Agreement The Same As On Sales To The Government Also Advise If We Correct In Continuing To Act As The Growers Agent On Our Government Sales Now That The Embargo Is Lifted Stop The Date Of Our Case Against Chester Bowles Will Be Set Today As The Judge Advised He Is Taking Jurisdiction The Civilians In Oregon And Washington Will Not Have Any Turkeys For Thanks-

(Testimony of C. W. Norton.)

giving Unless G-93 And G-3 Are Cancelled And  
Doubt If Can Get Court Decision In Time For  
Thanksgiving Personal Regards

C W NORTON,

President Northwest Poultry  
And Dairy Products Co..

RNW1 WUAG.. Thank U.. (1004AM).T

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Mr. Skulason: Show him this, please.

A. This one here is from K. W. Kerkey, Chief  
Office of Distribution, War Food Administration.

Q. What is the date?

A. That is dated October 30th.

Q. Will you read that?

A. "At request of T. G. Stitts, Government  
Chairman, you are [275] personally invited to at-  
tend a two-day meeting of the Poultry Industry  
Advisory Committee beginning November 10 at  
ten A.M. in Room 3106, South Agriculture Build-  
ing, Washington, D.C., to discuss ways and means  
of bringing about a better procurement rate of  
poultry for armed forces. **Attendance limited to**  
members only. Please advise whether or not you  
will attend."

Mr. Skulason: I offer that in evidence.

The Court: It is admitted.

(The telegram dated Washington, D.C., Oc-  
tober 30, 1944, K. W. Kerkey, Chief, etc., to  
C. W. Norton, Northwest Poultry and Dairy  
Products Co., so offered and received, was  
marked Plaintiff's Exhibit 7.)

(Testimony of C. W. Norton.)

PLAINTIFF'S EXHIBIT No. 7

(Western Union Telegram)

WU AD202 68/67 Govt—WUX Washington DC  
Oct 30 434P 1944 Rapid C W Norton Northwest  
Poultry And Dairy Products Co—232 Oak St  
Southeast

—At Request Of T G Stitts Government Chairman  
You Are Personally Invited To Attend A Two-  
Day Meeting Of The Poultry Industry Advisory  
Committee Beginning November 10 At 10 AM In  
Room 3106 South Agriculture Building Washing-  
ton DC To Discuss Ways And Means Of Bringing  
About A Better Procurement Rate Of Poultry For  
Armed Forces Attendance Limited To Members  
Only Please Advise Whether Or Not You Will  
Attend—

K W KERKEY,

Chief OFC Dist.

T G STITTS,

10 10AM 3106 DC. 152P..

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Mr. Skulason: You answered that with the  
other wire offered in evidence?

A. Yes, I did.

Q. And said you could not attend?

A. Could not attend.

Q. Now have you made any other efforts? Is  
there anything else as to this item that you can  
notify us on, Mr. Norton?

(Testimony of C. W. Norton.)

A. We have been working on this order since May 8th, practically entirely between Washington, D.C., and here. We started in with the office at San Francisco and there was absolutely no chance of getting any adjustment from there, so we started in at the other end of the line, at Washington, D.C.  
[276]

Q. Have you told us now all that you have in mind concerning this?

The Court: He made a remark when he was on the stand before, that he thought the thing could be considered together. What do you mean by that—interpreted together?

Mr. Skulason: Of what, if Your Honor please?

The Court: When he was on the stand before he made some remark about orders being considered together, read together, interpreted together.

The Witness: That was in regards to G-93 and G-3. We were called to the—I believe this is what you have reference to—we were called to the OPA office, all the wholesalers, and at that time we were presented with this Order G-93, or G-3, and were given to understand that those two orders were considered as one; that if we were forced to abide by G-3, certainly we would be forced to abide by G-93; that if they took a cent and a half away from us on one hand we would have to take it away from the growers on the other hand, which would be, in effect, putting the two orders together.

Q. Where was this meeting held?

A. At the OPA office in the Bedell Building.



(Testimony of C. W. Norton.)

Q. In Portland? A. In Portland.

Q. Who were present, representing the OPA?

A. Miss Cooper was there, and Mr. McCargar, and I believe all [277] the dealers in the City of Portland and some growers.

Q. Who called that meeting?

A. The OPA.

Q. And that was the result—you were informed they would be considered together?

A. That is right.

Q. And enforced together?

A. That is right.

Q. Then is there any other point?

The Court: What application does that have to what we are discussing?

Mr. Skulason: You mean what practical application?

The Court: Yes.

Mr. Skulason: Q. Now what is the practical effect of that on your business, Mr. Norton?

A. The practical effect, your Honor, is that if the OPA, under G-93, says that we should charge the growers so much for the processing of turkeys, and that is all we are to get, they take away the wholesaler's markup, so that we have to abide by the G-93 order in order to break even at all. The way it is now being allowed, to act as a wholesaler, we are permitted a one-and-a-half-cent markup on sales to restaurants, meat markets, steamships, and so forth. If that one-and-a-half-cent markup is taken away from us, then we would have to take it

(Testimony of C. W. Norton.)

away from the growers, which would, in effect, mean that we [278] would have to abide by G-93, which is taking more away from the growers than should be taken.

Q. Who takes the least, then?

A. The growers take the least. It does not affect the selling business of turkeys to the Government, or the consuming public one-hundredth of one per cent. I believe, in answering this other question, I started to say that I talked to the attorney in Washington today, and at this meeting tomorrow they will try and work out some solution which will have the effect of letting us act as an agent for the civilian trade, but there is nothing sure about it and I doubt very much if anything can come out of that in time for Thanksgiving. I am sorry I wasn't able to attend.

The Court: Any questions? That is all.

(Witness excused.)

Mr. Wetherall: We move to strike all the testimony of the witness and all the documentary evidence identified by the witness, on the grounds and for the reasons previously stated in similar motions.

The Court: I don't know that there is any need for me continually working on these motions. I understand you are protecting the record. Well, the only solution I have is, I don't think I am any more confused about this than everybody is who has anything to do with it, OPA included. Now

do you make any [279] claim of taking these regulations en masse? There is a construction of them that can be claimed, taking them all together, different from the one that is being impressed on them.

Mr. Skulason: I don't think so, your Honor. We can't see any other possible construction than what I have been trying to explain to your Honor, and there is no attempt made apparently to relieve the situation. You understand now what the civilian supply situation is here, and I don't see any remedy for it, except the annulment of the orders.

Mr. Wetherall: Your Honor, I might say that by acquiescing in counsel's argument we are by no means agreeing with what he has said.

The Court: You don't make me feel very good by saying that, to have me sit here and have me be deprived, at two or three successive hearings, of having the benefit of your discussions and the emphasis of your position, just for the purpose of making your record. That does not make me feel very good at all. You could just as well, so far as trying the OPA stuff that has been given to me in this case, you had just as well not be here. You stated on the record you wanted to dismiss, and you wanted your position made clear. You stated your position as to that and that is perfectly plain. Then you withdrew from the case altogether because you didn't want to, I take it, prejudice your position as to that. That is all perfectly plain. Of course you don't [280] acquiesce in it, and your position is that I have no right to act at all, and

maybe you are right. I haven't said yet that I have. But in a technical, involved, complicated, inconsistent matter like this, when San Francisco, Portland and Washington are acting, and are after a community of 500,000 people, I certainly feel that if counsel do participate in a hearing I am entitled to the benefit of an explanation of the position of the Government agencies. I haven't had it at all, and I don't think it would prejudice your basic claim that I have no jurisdiction to act. I am up to it now, that I have to take all of this matter and I have got the position of the other side but their position is a personal position. I have to take all of this matter now and take it off by myself and see if I can figure out what the Government was trying to do in saying that a man who has always been a wholesaler and been deemed in the world of business affairs as a wholesaler, is not now a wholesaler, and I would have welcomed—it is too late in the case now to be of any help—I would have welcomed some explanation of how anybody approaches a practical problem like this, of changing the category of people in the business world and what justification there is for doing that, other than somebody's fight—just somebody's idea that is a good thing to do.

So the record is perfectly clear. Your position on that side of the table is that I have no jurisdiction whatever [281] to act. Maybe I haven't, but there are lots of cases where jurisdictional objections are entertained, but, nevertheless, we feel that

we have to give the merits, in whole or in part, before we are prepared to feel confident to pass on the jurisdictional question. That is not an unusual situation.

Mr. Wetherall: I might add, your Honor, that of course the validity, it occurs to me, inevitably would draw us into complex questions of law and fact, and our participation in that issue would have required the calling of numerous witnesses on our part to discuss the economic background of these orders and explain how they relate to the trade—in a word, to explain just how the orders operate, and why they were issued in their present form. That would have been necessary in order to present a complete and fair case to the Court, and it seems to me that the trial here, if I may say so, demonstrates the wisdom of Congress in indicating Section 204 (d) and thereby channeling into a special court, namely, the Emergency Court of Appeals, the exclusive jurisdiction to try questions of this nature. Such questions of course are difficult questions to handle, and it seems to me that that is further argument in support of our position on that point.

The Court: In the early stage of OPA a perfect turmoil existed in this community about the scrap iron situation. Nobody here claimed to understand the regulations that had been put out, and certainly the trade didn't. A woman came [282] up here from San Francisco, who was the author of the amendment evidently. I spent a couple of days with her right out there at the table where you are



seated, and as a result things that were new and strange and complex were straightened out and a whole series of cases that had been filed here had a very eminent result, and I am unable to understand why, in a matter so important as this to so many people, the same explanations could not have been offered. That is just because it would be difficult to explain the OPA's reasons and its position. Difficulty never excuses any of us from discharging public duties. I find it difficult to step from a boom maker's case into a turkey case or into a Jehovah's Witness case, and I find myself quite tired mentally and physically at times, but that is what I am paid for and I don't think that anything so important to the public interest, and that affects the public interest as this does, should be kept a mystery at all.

Now you were making an argument this morning in the brief time you did speak, Mr. Wetherall, that in Chicago in that situation there somebody found, and endeavored to enforce the finding, that a person had a certain status—I forget what it was; I think it was that he was the owner of 10 per cent or more of the stock, or something like that; that that would be a question which would be considered in the courts, but that would not be an attack on the validity of [283] the regulation. Now I wonder if to deny a man a classification as a wholesaler when, in fact, he has been a wholesaler, the same logic would apply to that.

Mr. Wetherall: It seems to me, your Honor, the distinction there is, the plaintiff in this case is not

contending that under the facts of his operation he qualifies as a wholesaler within the definition of the regulation. He is questioning that definition. He is attacking the validity of that definition. As I understand the case, he is not asserting that as a factual matter he qualifies as a wholesaler within the definition of Regional Order G-3.

Now it should be pointed out also that in the Illinois Packing case we were concerned with a question of subsidy, which question is specifically mentioned in Section 2 (m) as being a matter as to which a Court may entertain jurisdiction under the limitations imposed by the section. In this case, however, we do not have a matter which, according to its very nature, would come within the scope of Section 2 (m), inasmuch as here we are dealing with a price regulation. We are not dealing with a subsidy matter, the Government contract, or with any question of allocation or quota. There is that further distinction to be made.

The Court: Do you care to speak on the point that has been emphasized here, and was emphasized at the prior hearing, that this price, in fact, is not a ceiling price; that it was a [284] minimum sales and maximum price; it was a fixed price, but not of the sort authorized by the Act?

Mr. Wetherall: I should like to say this in that regard, your Honor: It is not exact to say that the maximum price, 2.8 cents a pound and 3.8 cents a pound, depending on whether or not the turkeys are boxed—that those maximum prices as prescribed in Order G-93 are also minimum prices.

The interpretation which was issued by the Regional Office under G-93 and upon which the District Office interpretation referred to by counsel was based, in effect provides that the maximum price is a minimum price only in the situation where the processor actually buys the turkeys which he processes. In situations where the processor performs strictly a custom processing, that is to say in situations where the processor processes the birds, then the Grower takes them back and disposes of them as he sees fit, there is no restriction whatsoever as a matter of minimum charge which the Processor can make for rendering that service. That is to say, in a strictly custom processing operation where the grower retains title to the birds and the processor is performing a service only there is no limitation. The processor can render that service for the charge, if he sees fit. He can charge 2.8 or anything less than 2.8. The limitation, or, rather, shall we say the floor on his processing charge comes into play only where, after processing turkeys, he buys them from the grower [285] and in that situation if the processor charges the grower a price less than the maximum price prescribed in Order G-93, and at the same time buys the dressed turkeys at the ceiling price under R.M.P.R. 269, in effect it is our position, as has been stated in the interpretation, that that constitutes an evasion of R.M.P.R. 269, which is the poultry price regulation, inasmuch as it constitutes an overpayment to the grower in the purchase by the purchaser of the processed turkeys.

Now that position is very clearly stated in the interpretation, is well supported by analogies which may be taken in other fields of price control, and is likewise sound in policy inasmuch as it was necessary to take that position in order to prevent evasions, not in regard to the service charge itself but in regard to the purchase of dressed turkeys by the processor, because in rendering the processing service at the price less than the maximum price in the service order G-93, the same time paying the ceiling price for the dressed turkeys, the processor is in effect paying the grower more for the dressed turkeys than the ceiling prescribed in the price regulation R.M.P.R. 269 governing the sale of the dressed turkeys.

Now as I say, there is no requirement that the purchaser charge the full ceiling price on his processing service where he does not buy the dressed turkeys from the grower. In that sense, your Honor, it is not correct to say [286] that the maximum prices in Regional Order G-93 are also minimum prices. They become minimum prices, shall we say, as a matter of terminology only insofar as we are concerned with the situation where the processor buys dressed turkeys from the grower and by charging less than the maximum price for the service is in effect returning to the grower an over-ceiling payment in the purchase of the dressed turkeys.

The Court: I would like to hear you, if you are willing to speak on it, which I hope you are, entirely without prejudice to your basic position that

I am entirely without jurisdiction in the case. I can say that and mean it just the way I said it. I welcome very much this discussion I am having with you. How can these regulations be applied one way in order that the men in the armed services can get turkeys and they can be applied in another way as to the civilian population?

Mr. Wetherall: Your Honor, I think there has been some confusion in connection with marketing of turkeys. There was a War Food order, I believe No. 96—isn't that correct, Mr. Skulason?

Mr. Skulason: I don't know.

Mr. Wetherall: A War Food Order, I think it is 96, which until 12:01 A.M. last Saturday, November 5, placed an absolutely 100 per cent embargo on the sale of any turkeys to the civilian market. Now the purpose of that order was simply to permit the Government Procurement Agencies to acquire a sufficient [287] supply of turkeys so that our armed forces could have their Thanksgiving dinners. Throughout the duration of that order it was illegal for anyone, be he a processor or a wholesaler, to sell turkeys on the civilian market unless those turkeys had been inspected by the Army and rejected—for some reason rejected.

The Court: Yes. We have had that heretofore. I understand that.

Mr. Wetherall: Rejected as not meeting the Army requirements. Therefore the question of supply to the civilian market is wholly ineffective.

The Court: At that time?



Mr. Wetherall: By the Price Regulation.

The Court: At that time, yes.

Mr. Wetherall: That is correct. Now as to what has occurred since the embargo was lifted last Saturday, I will be very frank to say I am not informed. I was led to believe that upon the termination of the War Food Order the Government would continue to take whatever turkeys it needed to fulfill its requirements, which I believe were about 60,000,000 pounds. The Government would do it on a contract basis, would go in and make contracts for acquiring whatever turkeys it needed, and I am not sure as to this but there was some discussion as to whether the turkeys should first be offered to the Procurement Agency in order that they might decide whether or not to take them before [288] they were turned into civilian channels. As I say, I am more or less speculating as to what the situation is now, since the embargo was lifted last Saturday.

However, I do think it is important to bear in mind that there is a distinction between the supply situation; there is a distinction between that and the price situation and the Office of Price Administration, of course, is not responsible for any situation which may be created by the War Food Embargo, or set aside, whether—

The Court: Now listen here, Mr. Wetherall, I am reading from this teletype, which authorized the agency arrangement of it:

“After very careful consideration of all aspects of the problem involved in this ruling”—this is

going back to the first paragraph, which I am not reading—"which has been re-examined because of Army difficulties in obtaining its poultry requirements"—now if the same regulations that we are dealing with here now would not work as a practical matter, so that the Army and Navy might get their requirements and a modification of them was necessary with this Agency Arrangement to make them work, and as a result of that modification the Army did get its requirements, why aren't the civilian population entitled to the same treatment?

Mr. Wetherall: I think I can explain that, your Honor, in this fashion: The interpretation of October 3rd, 1944, [289] which you have just referred to, and which emanated from the National Office of the OPA, states, as you have pointed out, that in order to facilitate the acquisition of turkeys by the Army it was thought necessary to permit the processor to establish an agency relationship with the grower whereunder he would be in a position to return to the grower full ceiling price which he might obtain upon sale of the turkeys to the Government, which price of course would include a one-cent selling addition which is allowed on all Government sales.

Now I take it that this is what that order has in mind, or that interpretation has in mind. It is possible—as I say, I am simply giving you my own opinion of the matter—it is possible that unless the growers were able to obtain any addition to the ordinary ceiling price on the dressed turkeys of one cent per pound selling addition, which would be al-

lowed on sales to the Government, it is possible they would have been inclined to withhold their turkeys from the market until such time as they felt, or, rather, until perhaps the Government Embargo would have been lifted. That may be what is in the back of their mind so far as the price interpretation is concerned, and it possibly was felt by the National Office in issuing that interpretation that by permitting a processor to set himself up as an agent for the grower in marketing the turkeys for the grower to the Government, upon which of course the full amount of the ceiling price could be [290] returned to the grower, inasmuch as the processor would be merely a channel for passing that price back to the grower—by permitting that to be done, possibly the movement of turkeys to the market would have been stimulated to such an extent that the Army would more quickly obtain its quota.

The Court: Well, this teletype came about as a result of this lawsuit that you are in right here now.

Mr. Skulason: That is right.

The Court: This lawsuit was brought on September 29th, and the first hearing on it before me was on I don't know what day. The testimony was all to the effect that because of these same regulations we are talking about now, despite the fact that an embargo was on all turkeys in favor of the armed services they were not going to get them because of the unworkability of these regulations, and so I received decisions on all questions, includ-

ing the jurisdictional question, because, for one reason, it had been testified to before me that this teletype had just come through, or its substance—something or other was said about this coming through—to take care of the situation we were dealing with then as a practical matter, and then a few days later when it did come through, why, Mr. Skulason sent me a copy of it, saying that the plaintiff and others were going ahead under it. Now, I repeat, the case comes up now for a further hearing and the plaintiff makes a showing that under the same regulations that we were [291] dealing with before the civilian demand would be supplied, and for the same reasons, that is; and so my question now is, why, if it was necessary and fair to relax the regulations in order to take care of the armed forces' needs, why the civilian population are not entitled to the same consideration, the plaintiff's interest aside?

Mr. Wetherall: As I understand plaintiff's position in that matter it is this: That the civilian market will not be supplied, so far as we are concerned, because, unless we are able to take the cent and a half markup allowed to wholesalers, we cannot operate, and for that reason——

The Court: The plaintiff's position is, unless I am misstating it, that if this word "Army" were not in the telegram, and if this last sentence were not here, "Nor does this interpretation permit the sharing or splitting of any part of a sale price or permitted decrease in other instances," which

means other than armed forces—if those words were not in that telegram he would be doing business with the civilian; is that right or not?

Mr. Skulason: Yes. I think so, your Honor.

The Court: Yes. So now I repeat my question, why, if this agency arrangement was deemed necessary by the OPA in Washington in order for the soldiers and sailors to get turkeys, why aren't the civilian population, the plaintiff's interest aside—I am talking about a whole lot of people outside of this courtroom [292] now, men, women and children—why aren't they entitled to the same consideration?

Mr. Wetherall: Well, the only answer I can give as to that is this: It often happens that a seller who is not satisfied with his price will withhold his commodity from the market, in the hope that he will ultimately be granted a higher price. As to that we are more or less impotent. Now I cannot say how the agency relationship would have any bearing on the supply of turkeys sold in the civilian market, unless for some reason or other a grower takes the position that he will not sell these turkeys to a processor unless the processor is in a position, under the Regulation, to serve as an agent for the grower—I am using a conflict in language there—that he will not market his turkeys rather than sell them.

The Court: Well, the case made before me is that if this applied to the civilian situation, as it did apply to the Army, that the same result would



follow and this blockade would be eliminated. That is the case that is made before me. If there is testimony to the contrary I will be glad to hear it.

Mr. Wetherall: It must be borne in mind that unless the processor is entitled to act as agent for the grower, the grower is not entitled to receive the one-cent selling addition on sales to the Government. [293]

The Court: Now let me tell you, Mr. Wetherall, what I think you are interested in, and let me tell you why I think you just can't stand on your broad proposition that I have no jurisdiction—that no judge anywhere has any jurisdiction to act in a case like this. The statute says that jurisdiction is withdrawn as to the validity of a regulation, but I don't think that withdraws jurisdiction as to discrimination of such a gross nature as this in the application of a regulation. I doubt very much—I am going to take it home with me tonight and ponder on it—the question whether or not with its own regulations, OPA can relax them in order to make them work as to one great group of people and deny that same relaxation in order that they may work as to another group of people. Now that is an important question I am going to take away with me, and that has nothing whatever to do with the validity of the regulation. It is in the way your own regulation is applied by you to the consumer population of the country, with reference to Army men on the one hand and civilians, including those in war industries, on the other.

Mr. Wetherall: Well, of course, we feel that that is essentially a question of the validity. I don't think there is involved in this case any question of any conduct on the part of the OPA officers which goes beyond the regulations themselves; and, by regulations, of course I include the Regional Orders, G-93 and G-3. [294]

The Court: Mr. Wetherall, I hope you don't maintain that you could apply an OPA regulation to one man and not apply it to his competitor and say that the validity of the regulation was involved if his competitor came up here, or, rather, if the one to whom it was applied came up here and said, "I am being driven out of business because a restrictive regulation is being applied to me, and for reasons, I know not what, they are not being applied to my competitor across the street."

Mr. Wetherall: We are not applying the regulations here, your Honor, to any one seller. We are applying these regulations and the Regional Orders to all sellers alike, as they may be affected by those regulations and orders. There is no question of that, so far as the Office of Price Administration is concerned. In fact, processors have acquiesced in these orders. They are observing these orders; at least, they are observing them until such time as perhaps they may be able to effect a change in a legal manner. I don't know as to that. I do have evidence that processors agree with the order—with the orders that are in favor of them. I point that out simply to indicate to your Honor that these are not 1-man orders, so

to speak. They are orders having general application to all processors and all persons who may be affected by them.

The Court: In District 8?

Mr. Wetherall: In Region 8, yes. [295]

The Court: In Region 8.

Mr. Wetherall: That is within the area prescribed.

The Court: Any more?

Mr. Skulason: I think that is all.

The Court: Adjourn until tomorrow morning.

(Thereupon, at 3:52 o'clock P. M., Court was adjourned.) [296]

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[Title of District Court and Cause.]

#### REPORTER'S CERTIFICATE

I, Alva W. Person, hereby certify that I reported all of the evidence given and all arguments made upon the trial of the above-entitled cause before the Honorable Claude McColloch, Judge of the above-entitled Court, on Thursday, November 9th, 1944; that I thereafter caused my shorthand notes to be reduced to typewriting, and the foregoing and hereto attached 113 pages of typewritten matter, numbered 184 to 296, both [297] inclusive, constitute a full, true and accurate record of all of the oral proceedings had and evidence given upon said trial on said date, and the whole thereof.

Dated at Portland, Oregon, this 31st day of March, A. D. 1945.

ALVA W. PERSON

Court Reporter

[Endorsed]: Filed April 3, 1945. [298]

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[Endorsed]: No. 11028. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, Administrator of the Office of Price Administration, Appellant, vs. Northwest Poultry and Dairy Products Company, an Oregon Corporation, and C. W. Norton, President, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed April 6, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United  
States in and for the Ninth Circuit

No. 11028

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Appellant,

v.

NORTHWEST POULTRY AND DAIRY PROD-  
UCTS COMPANY, an Oregon corporation,  
and C. W. Norton, President,

Appellee.

### STATEMENT OF POINTS

On the appeal taken in the above entitled action the appellant, Chester Bowles, Administrator of the Office of Price Administration, will urge and rely upon the following points:

1. The District Court erred in dismissing the action.

2. The District Court erred in failing to enforce the inspection requirement referred to in the complaint or application.

3. The District Court erred in holding that all the information which appellees were required to disclose was disclosed during the trial of Northwest Poultry and Dairy Products v. Chester Bowles, No. 2575, lately pending in the court below.

4. The District Court erred in failing to enter an order requiring appellees to permit the inspection and copying by authorized employees of Office



of Price Administration of the records described in the aforesaid inspection requirement.

HERBERT H. BENT

Acting Regional Litigation  
Attorney

FRANZ E. WAGNER

District Enforcement At-  
torney

Attorneys for the Appellant.

[Endorsed]: Filed June 21, 1945. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

#### DESIGNATION OF RECORD

Appellant herein designates the entire certified transcript, including all exhibits, to be contained in the printed record on appeal herein.

HERBERT H. BENT

Acting Regional Litigation  
Attorney

FRANZ E. WAGNER

District Enforcement At-  
torney

Attorneys for the Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed June 21, 1945. Paul P. O'Brien, Clerk.

